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Dated 18 September 2019



TASMANIA

SUPREME COURT CIVIL PROCEDURE ACT 1932

No. 58 of 1932

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SUPREME COURT CIVIL PROCEDURE ACT 1932

No. 58 of 1932

An Act to amend the law relating to the civil jurisdiction of the Supreme Court of Tasmania and the procedure and practice relating to the exercise of such jurisdiction, and for other purposes relating to the better administration of justice in this State

[Reserved 10 March 1933]

[Royal Assent 2 August 1933]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

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Act No. 58 of 1932

s. 1 Part I – Jurisdiction, Procedure, and Practice as to Exercise of Jurisdiction,
and Rules of Law

**PART I – JURISDICTION, PROCEDURE, AND
PRACTICE AS TO EXERCISE OF JURISDICTION,
AND RULES OF LAW**

1. Short title and commencement

- (1) This Act may be cited as the *Supreme Court Civil Procedure Act 1932*.
- (2) This Act shall come into operation on 1st January 1934.

2. Repeals

- (1) The several statutes mention in Schedule I are hereby repealed to the extent in the said schedule stated.
- (2) Any enactment inconsistent with this Act in any statute which it is competent for the Parliament of Tasmania to repeal is hereby repealed.
- (3) But no such repeal shall affect any action, cause, suit, matter, or proceeding duly begun, or any appeal pending, before the commencement of this Act.
- (4) Except so far as is expressly enacted by any part of this Act, other than subsection (1) and Schedule I, nothing in this Act (including subsection (1) and Schedule I) shall –
 - (a) take away, lessen, or impair any jurisdiction, power, or authority (judicial or ministerial) which, immediately before

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the commencement of this Act, was vested in or capable of being exercised by the Supreme Court or by any one or more of the judges thereof, whether sitting in Court or in chambers or elsewhere; or

- (b) affect any principle or rule of law or equity established or confirmed by or under any enactment repealed by subsection (1).

3. Interpretation

- (1) In this Act, unless the contrary intention appears

—
a judge sitting in chambers, a single judge sitting in chambers, and a judge in chambers include a judge sitting in court as in chambers and a judge sitting in any place otherwise than as a court or as a member of a court;

a judge sitting in court means a judge sitting in court as a court, whether with or without a jury or an assessor or assessors;

action, when used with reference to proceedings in the Supreme Court, means a civil proceeding commenced by writ of summons or statement of claim, and any proceeding which, by any express provision in the Rules of Court, is declared to be an action: the Rules of

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Court may declare any proceeding to be an action either for all purposes or for any particular purpose or purposes, and in the latter case the proceeding shall, as to such purpose or purposes, but not further or otherwise, be deemed to be an action;

administration includes all letters of administration of the effects of deceased persons, whether with or without a will annexed and whether granted for general, special, or limited purposes;

any Act means any Act of the Parliament of Tasmania;

any Rules of Court means the Rules of Court for the time being in force under this Act, or any Orders or Rules of Court which are by this Act directed or authorized to be applied or used in the Supreme Court;

assessed capital value, when used with reference to land, means the capital value at which the land to which the expression is to be applied is for the time being valued under the provisions of the *Valuation of Land Act 2001*, or any Act substituted for that Act;

Associate Judge means the Associate Judge of the Supreme Court;

Attorney-General includes Solicitor-General in the case of a vacancy in the office of

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Attorney-General, or in the case of the
incapacity of the Attorney-General;

body politic includes His Majesty in right of
His Imperial Crown and His Majesty in
right of any part of His dominions other
than this State;

cause includes any action, suit, or other
original civil proceeding between parties;

Charter of Justice means the Charter of
Justice granted by the letters patent of
His late Majesty William IV, dated 4th
March 1831, constituting the Supreme
Court of Van Diemen's Land;

Chief Justice means the Chief Justice of the
Supreme Court or the Acting Chief
Justice of the Supreme Court, or, if there
is not any Chief Justice as so defined, or
if the Chief Justice as so defined is
absent, the Senior Puisne judge;

Court or a judge means a Full Court or any
judge of the Court whether sitting in
Court as a Court or as in chambers, or in
chambers, but the expression shall be
read and construed subject to the
provisions of Part II;

defendant includes every person against
whom an action is instituted and every
person served with any process or with
notice of, or entitled to attend, any civil
proceeding in the Court;

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existing means existing immediately before the commencement of this Act;

freight includes passage-money and hire;

Government of this State means the Executive Government of this State, and it includes His Majesty in right of this State, and the Governor and the several Ministers of the Crown for this State, and any Ministry, Board, Trust, Authority, Commission, Commissioners, persons or person (whether incorporated or not, and howsoever styled) charged or invested as a department or branch of the Executive Government of this State with the execution, administration, management, or control of any duty, authority, or function of the Executive Government of this State, or of any undertaking, business, trade, or other operation or concern whatsoever (whether a commercial operation or concern or not) conducted or carried on for or on behalf of the Executive Government of this State, under or by virtue of His Majesty's Royal Prerogative or any statute or other lawful authority;

Houses of Parliament means the Legislative Council and the House of Assembly;

in a summary way, as applied to statutes passed before the commencement of this Act, means otherwise than by an action at

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law or in the Admiralty Jurisdiction of the Court, or a cause or suit in the Ecclesiastical Jurisdiction of the Court, or a suit in equity, or a cause or suit in the Matrimonial Causes Jurisdiction of the Court; and, as applied to statutes passed after the commencement of this Act, means otherwise than by an action;

inferior court of civil jurisdiction includes any court instituted under the *Magistrates Court Act 1987* when exercising a civil jurisdiction;

instrument includes any statute;

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

judge and *single judge* mean a judge of the Supreme Court, and include a judge sitting in court and a judge sitting in chambers, and a judge sitting in court or elsewhere as in chambers, and a judge sitting with a jury or an assessor or assessors;

judgment includes decree and a decree *nisi* in a matrimonial cause;

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

matter includes any civil proceeding in the Court, whether between parties or not,

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and any subordinate officer, employee, or servant under any such Minister, Ministry, Board, Trust, Authority, Commission, Commissioners, persons, or person as aforesaid, and any other officer, employee, servant, or agent of the Government of this State as such;

Order includes rule;

original proceeding means any civil proceeding in the Court which is not a proceeding in a pending cause or matter; and it includes every cause, and every summons, order, or notice in any interpleader proceeding, or for the appointment of an arbitrator or umpire, or to remit, set aside, or enforce an award in any arbitration held or to be held within this State;

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

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answer of either party; and any petition
or summons;

prescribed officer means the officer
prescribed by the Rules of Court;

procedure and practice and *procedure or
practice* include the form, mode, and
course of proceeding and the process and
pleadings in any proceeding (whether
original or on appeal), which is subject to
the provisions of this Act, and the
regulation of all matters whatsoever
relating to the institution, conduct, trial,
or hearing of, and the adjudication in,
any such proceeding, and the
enforcement of any adjudication given or
made therein and the regulation of all
proceedings consequent on any
adjudication given or made therein, and
the powers of the Court or any judge
thereof with respect to any such
proceeding, and the means by which
particular facts may be proved therein
and the mode in which evidence thereof
may be given, and the costs of any such
proceeding, and the fees and percentages
payable in respect thereof, and the fees
and allowances to be payable to
practitioners of the Court in respect
thereof, and the regulation of the
payment, transfer, or deposit into, or in or
out of, the Court of any money or
property and the dealing therewith, and
(subject to the provisions of Part II) the

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- (c) any individual or individuals or body of persons, whether corporate or unincorporate, and any corporation sole charged or invested (otherwise than as a department or branch of the Executive Government of this State, or as a member or members of the public merely) by or under any Act, or any by-law, order, regulation, or other instrument made or issued under or by virtue of any Act, with the execution, administration, management, or control of any public duty, authority, or function, or any undertaking, business, trade, or other operation or concern whatsoever (whether a commercial operation or concern or not) conducted or carried on for or on behalf of the public or any local or other division of, or any other part of, the public –

but does not include either of the Houses of Parliament or any officer thereof when acting as such, or any court or any judge or officer thereof when acting as such, or any officer, employee, servant, or agent of the Government of this State when acting as such;

public officer means any officer, employee, servant, or agent of the Government of

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this State, and any other officer (including a corporation sole) charged or invested with any public duty, authority, or function; but does not include a member or officer of either of the Houses of Parliament when acting as such, or a judge or any officer of any court when acting as such;

Registrar means the Registrar of the Supreme Court;

repealed as applied either to Imperial statutes generally or a particular Imperial statute means (according to the context) either –

- (a) that such statutes or statute shall no longer have any force or effect in this State; or
- (b) declared to be no longer of any force or effect in this State –

and the term ***repeal***, as applied to any such statutes or statute, shall have a corresponding meaning;

Rules of Court includes forms;

Sheriff includes a Deputy-Sheriff and any other person bound or entitled to discharge the duties of the Sheriff;

statute means any Imperial Act in force in this State and any Commonwealth Act and

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any Act of the Parliament of Tasmania,
and includes this Act;

suit includes action;

Supreme Court means the Supreme Court of
Tasmania;

testamentary cause or matter includes all
causes or matters relating to the grant or
revocation of probate or administration;

the Court means the Supreme Court of
Tasmania;

the Rules of Court means the Rules of Court,
including the forms, fees, costs, and
percentages in Schedule II, or other the
Rules of Court for the time being in force
under this Act;

this Part means the part of this Act in which
the expression is used;

trial includes hearing;

unrepealed Act means any Act of the
Parliament of Tasmania which is not
expressly or impliedly repealed by this
Act, and it includes any part of or
provision in any Act of the Parliament of
Tasmania which is not expressly or
impliedly repealed by this Act;

vessel means any ship, boat, or other
description of vessel used in navigation;

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Commonwealth of Australia, and to any rules or regulations lawfully made under any such Act.

- (5) Any enactment in this Act which is expressed to be made notwithstanding any statute to the contrary shall be construed as purporting to repeal or displace or to operate in derogation of such statutes only as it is competent for the Parliament of Tasmania to repeal, displace, or derogate from.
- (6) For the purpose of construing the expressions “subject to this Act” and “subject to the provisions of this Act” in this Act, Schedule II shall not be deemed to be part of this Act unless in any particular instance of the use of either of the said expressions it appears from the subject or context that the said schedule is intended to be included in such expression.
- (7)

4. Supreme Court may exercise jurisdiction in Admiralty actions

The Supreme Court may exercise the jurisdiction conferred on it in relation to Admiralty causes and matters by or under the *Admiralty Act 1988* of the Commonwealth.

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be in the same manner as the same might have been exercised if this Act had not passed.

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

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jurisdiction shall be exercised in such form, mode, and manner as the Court or a judge may direct.

- (4) Where any statute passed after the commencement of this Act, or any order, rule, regulation, or other instrument, made under or by virtue of any such statute, confers any jurisdiction, whether original or appellate, on the Court, or on the Court or a judge thereof, or on a judge of the Court, such jurisdiction shall (except as otherwise provided by any such statute) be exercised (so far as regards procedure and practice) in the manner directed by subsection (3).
- (5) The Court, and every judge thereof, shall, in relation to probate and letters of administration, have –
 - (a) all such voluntary and contentious jurisdiction and authority in relation to granting or revoking of probate and administration of the real and personal estates of deceased persons, as is vested in or exercisable by the Court at the commencement of this Act;
 - (b) within and with respect to this State, the like voluntary and contentious jurisdiction and authority in relation to granting and revoking of probate and administration of the effects of deceased persons, as at the commencement of the Imperial statute intituled the *Court of*

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Probate Act 1857, was exercisable within and with respect to England, or any part thereof, by any court or person in England, together with full authority to hear and determine all questions relating to testamentary causes and matters;

- (c) like powers within and with respect to this State, in relation to the personal estate in this State of deceased persons, as the Prerogative Court of Canterbury had immediately before the commencement of the Imperial statute intituled the *Court of Probate Act 1857* in the Province of Canterbury, or in the parts thereof within its jurisdiction, in relation to those testamentary causes and matters, and those effects of deceased persons, which were at that date within the jurisdiction of that court;
- (d) such like jurisdiction and powers with respect to the real estate of deceased persons as are hereinbefore mentioned with respect to the personal estate of deceased persons –

and the Court shall, in the exercise of such jurisdiction and authorities, perform within this State all such like duties with respect to the estates of deceased persons as were immediately before the commencement of the Imperial statute intituled the *Court of Probate Act 1857* to be performed in England, or any part thereof, by ordinaries generally or by the Prerogative Court

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any form, mode, or course of proceeding in, or to any form to be used in, any cause or matter within any part of the jurisdiction of the Court which is subject to this Act, shall be deemed to be references to the appropriate form, mode, or course of proceeding, or the form provided or prescribed by this Act or the Rules of Court.

- (2) All unrepealed Acts, and all other statutes passed before the commencement of this Act and not repealed by this Act, which contain any provision providing for or referring to the obtaining of relief in equity, or the institution of any proceedings in the Equity Jurisdiction of the Court with respect to any cause or matter which is the subject of an action at law, shall be read and construed subject to section 10.
- (3) All references in any statute or any instrument to any existing Orders or Rules of the Court relating to the procedure or practice to be followed, observed, or applied in any cause or matter (whether original or on appeal) within any part of the jurisdiction of the Court which is subject to this Act, shall be deemed to be references to the Rules of Court for the time being in force under this Act, so far as such Rules of Court make any provision for the matters dealt with in any such existing Orders or rules or regulated by such procedure or practice.
- (4) Where by any statute, whether passed before or after the commencement of this Act, Orders or Rules of Court are directed or authorized to be made to regulate the procedure or practice to be

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commencement of this Act confers on or vests in the Court or any judge thereof any original jurisdiction (which becomes a part of the jurisdiction of the Court which is subject to this Act) to hear and determine or dispose of any application or matter, or to decide any question, or to make any order, or to otherwise exercise any original jurisdiction, in a summary way, such application or matter, or the proceeding to obtain such decision or order, or an exercise of such jurisdiction, shall, subject to the provisions of any such Act, be instituted in the form or mode prescribed by the Rules of Court, or if no form or mode is so prescribed, then by motion, summons, petition, or rule or order to show cause, as may be appropriate; and every such application, matter, or proceeding shall, subject to the provisions of any such Act, be conducted, proceeded with, heard, and determined in the manner provided by this Act and the Rules of Court.

- (3) In all cases in which the Court or any judge thereof is invested by any Commonwealth Act (whether passed before or after the commencement of this Act) with any original jurisdiction (which is or becomes part of the jurisdiction of the Court which is subject to this Act) to hear and determine or dispose of any application or matter, or to decide any question or to make any order, or to otherwise exercise any original jurisdiction, in a summary way, such application or matter, or the proceeding to obtain such decision or order, or an exercise of

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- (a) in criminal causes, matters, or proceedings;
 - (b) in proceedings in bankruptcy or insolvency;
 - (c) in proceedings on applications made under Part 8 of the *Electoral Act 2004*;
 - (d) in proceedings under Part XI of the *Justices Act 1959*.
 - (e - f)
- (1A) Nothing in this Act shall affect the procedure or practice of the Court in non-contentious proceedings in any probate or administration matter, but the procedure and practice in such non-contentious proceedings may be regulated by the Rules of Court.
- (2) Except as provided by subsection (4), the provisions of paragraph (a) of subsection (1) shall extend to and include appeals from, and any other proceedings to review or call in question, any conviction, order, judgment, determination, or adjudication made or given by a court of summary jurisdiction in any criminal cause, matter, or proceeding.
- (3)
- (4) All proceedings in the Court for and on and in connection with an order of review under the *Judicial Review Act 2000* or a writ of *habeas corpus* shall for the purposes of this Act

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10. Law and equity to be administered concurrently

Subject to the express provisions of any other Act, in every cause or matter commenced in the Court, law and equity shall be administered according to the following provisions of this section:

- (1) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right which heretofore could only have been given by the Court in its jurisdiction in equity, the Court or judge shall give to such plaintiff or petitioner the same relief as ought to have been given by the Court in its jurisdiction in equity in a suit or proceeding for the like purpose properly instituted before the commencement of this Act.
- (2) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in the cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the Court or judge shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, the same effect, by way of defence against the claim of such

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such claim pursuant to the Rules of Court or any order of the Court, as might properly have been granted against that person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose;

- (b) every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim as if he had been duly sued in the ordinary way by such defendant.
- (4) The Court and every judge thereof shall take notice of all equitable estates, titles, and rights and all equitable duties and liabilities appearing incidentally in the course of any cause or matter in the same manner in which the Court in its jurisdiction in equity would have taken notice of the same in any suit or proceeding duly instituted therein before the commencement of this Act.
- (5) No cause or proceeding at any time pending in the Court shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, whether unconditionally or on any terms or conditions, if the *Legal Procedure Act 1903* had not passed, may be relied on by way of defence thereto: Provided that –

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- (a) nothing in this Act contained shall disable the Court or any judge thereof from directing a stay of proceedings in any cause or matter pending before it or him if it or he shall think fit; and
 - (b) any person, whether a party or not to any such cause or matter who would have been entitled, if the *Legal Procedure Act 1903* had not passed, to apply to the Court or a judge thereof to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, in contravention of which all or any part of the proceedings in the cause or matter have been taken, may apply to the Court or a judge by motion or summons in a summary way for a stay of proceedings in the cause or matter, either generally or so far as may be necessary for the purpose of justice, and the Court or judge shall thereupon make such order as shall be just.
- (6) Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, and to the other express provisions of this Act, the Court and every judge thereof shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common law or by any custom or created by any statute, in the same manner as the same would

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have been recognized and given effect to if this Act had not passed.

- (7) The Court and every judge thereof, in the exercise of the jurisdiction of the Court which is subject to this Act, shall in every cause or matter pending in the Court grant, either absolutely or on such terms and conditions as to the Court or judge shall seem just, all such remedies whatsoever as any of the parties thereto may be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

11. Miscellaneous rules of law

- (1)
- (2) Except as provided by the *Trustee Act 1898*, no claim of a *cestui que* trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations.
- (3) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon a tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right

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commencement of the *Legal Procedure Act 1903*.

- (8) Subject to the express provisions of any other Act, in questions relating to the custody and education of infants the rules of equity shall prevail.
- (9) Subject to the provisions of this Act and the Rules of Court, the rules of equity as to discovery shall apply to all proceedings in the Court which are subject to this Act; but where an affidavit as to documents in the possession or power of any party to any such proceeding has been made pursuant to an order in that behalf, the Court or any judge thereof may, if it or he thinks it just so to do, make an order for the inspection by any other party to the proceeding of any document in the possession or power of such first-mentioned party, notwithstanding that he has not referred to such document in his affidavit of documents or that he has by affidavit claimed protection from the production of such document on the ground that the same forms, supports, evidences, or relates exclusively to his own case, and that it contains nothing supporting or tending to support the case of the other party and notwithstanding that the Court in its jurisdiction in equity would not have ordered such inspection before the commencement of this Act; but nothing in this subsection contained shall be so construed as to deprive any party to any proceeding of any common law right to inspect any document.

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(10) Generally, in all matters not particularly mentioned in this Act in which there was, before the commencement of the *Legal Procedure Act 1903*, or this Act, any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall, subject to the express provisions of any other Act, prevail.

(11) –

(a) Where by the fault of two or more vessels damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability of the owner of each of those vessels to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault: Provided that –

(i) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally;

(ii) nothing in this subsection shall operate so as to render any such owner liable for any loss or damage to which his vessel has not contributed;

(iii) nothing in this subsection shall affect the liability of any person

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- under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting any right of any person to limit his liability in the manner provided by law;
- (iv) nothing in this subsection shall affect the right of an owner of a vessel not itself in fault which has suffered damage or loss by reason of the fault of two or more other vessels, to recover his damage or loss from the owners of the vessels in fault jointly or severally; and
- (v) nothing in this subsection shall be construed to affect the liability at common law, as for a tort, of an owner of any vessel in fault to any owner of any cargo or any property on board such vessel or any other vessel or vessels in fault, it being the intent of this clause to preserve the right of the owner at common law of any cargo or property on board any vessel in fault, who is not the owner of any such vessel or otherwise responsible for the fault, to recover the whole of his

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(d) –

- (i) Where loss of life or personal injuries is or are suffered by any person on board a vessel, owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels which exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which that vessel or those vessels was or were respectively in fault;
- (ii) Provided that no amount shall be recovered which could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or which could not for any other reason, have been recovered in the first instance as damages by the person entitled to sue therefor;
- (iii) In addition to any other remedy provided by law the person entitled to any such contribution as aforesaid shall, for the purpose of recovering the same, have,

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- (ii) Provided that the Court or a judge may, in accordance with the Rules of the Court, extend any such period to such extent and on such conditions as it or he thinks fit, and shall, if satisfied that there has not during such period been any reasonable opportunity of enforcing the claim, extend such period to an extent sufficient to give such reasonable opportunity;
- (f) The provisions of this subsection –
 - (i) shall be read and construed subject to the provisions of section 9(5);
 - (ii) shall be read and construed subject to the *Navigation Act 1912-1961*.
- (12) An injunction may be granted or a receiver appointed by an interlocutory order of the Court or a judge thereof in all cases in which it shall appear to the Court or judge to be just and convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court or judge shall think just; and if, whether before, or at, or after the hearing of any cause or matter, an application is made for an injunction to prevent any threatened or apprehended waste or trespass, the injunction

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- (14) In the case of any action for a forfeiture brought for non-payment of rent, the Court or a judge thereof shall have power to give relief in a summary manner, and subject to the same terms and conditions in all respects as to payment of rent, costs, and otherwise as could formerly have been imposed in the Court in its jurisdiction in equity; and if the lessee, his executors, administrators, or assigns are so relieved, they shall hold the demised premises according to the terms of the lease, and without the necessity of any new lease.
- (14A) Every tenant to whom there is delivered any writ in ejectment for the recovery of premises demised to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice of that writ to his landlord, bailiff, or receiver, and, if he fails so to do, he shall be liable to forfeit to the person of whom he holds the premises an amount equivalent to the value of 3 years' improved or rack rent of the premises, to be recovered by action in the Court.
- (15) No action or process may be had, maintained, or prosecuted against a person on whose land a fire accidentally begins, and he shall not be required to make recompense for any damage suffered thereby, any law, usage, or custom to the contrary notwithstanding.
- (16) Subsection (15) does not affect contracts or agreements made between landlord and tenant.

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13. Costs of actions brought in Supreme Court which might have been brought in an inferior court

- (1) Where an action which, having regard to the sum recovered, could have been properly instituted in some inferior court of civil jurisdiction is instituted in the Supreme Court, the Court, a judge thereof, or a judge, officer, referee, or registrar to whom subsection (2)(b) or (c) refers, may, notwithstanding that the sum recovered does not exceed the jurisdictional limit of the inferior court, make an order allowing the plaintiff the costs of the action.
- (2) In any action to which subsection (1) applies –
 - (a) the Supreme Court or a judge thereof;
 - (b) (in the case of an interlocutory judgment or of a reference to a referee) the judge, judge of the inferior court of civil jurisdiction, officer of the court, or referee by or before whom the amount recovered in the action was ascertained or determined; or
 - (c) (in the case of a final judgment by default) the registrar at the registry in which the judgment is signed or entered

–
may allow the costs or any part of the costs of the action on any Supreme Court scale of costs, or any scale of costs in any inferior court of civil jurisdiction, as it or he, as the case may be, thinks fit.

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or referee by or before whom the amount recovered in the action was ascertained or determined. In any case in which an application for an order under subsection (2) has not been made at the trial, inquiry, reference, or other hearing at which the amount recovered in the action was ascertained or determined, and in which it has become impossible, impracticable, or inconvenient to make the application to the judge, judge of the inferior court of civil jurisdiction, or officer of the court, or referee by or before whom the amount recovered in the action was ascertained or determined, the application shall be made to another judge (if the amount recovered in the action was ascertained or determined by a judge) or to a judge (if the amount recovered in the action was ascertained or determined by a judge of an inferior court of civil jurisdiction or an officer of the court or a referee).

- (5) In the case of a final judgment by default an order under subsection (2) may be made by the registrar at the registry in which the judgment is signed or entered at the time of the taxation of the costs of the action, or if the costs of the action are not required to be taxed, then at any time before final judgment is signed or entered.
- (6) An order of a judge under this section, and the refusal by a judge to make such an order respectively, shall be deemed to be an order as to costs only within the meaning of section 44.

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**PART II – ORGANIZATION OF COURT AND
ALLOCATION OF BUSINESS**

14. Organization of Court

Subject to the provisions of this Act, the jurisdiction of the Court which is subject to this Act shall be exercised by –

- (a) a Full Court consisting of two or more judges of the Court sitting together as one court, either with or without a jury or an assessor or assessors;
- (b) single judges sitting in court as a court, either with or without a jury or an assessor or assessors;
- (c) single judges sitting in chambers, or in court or elsewhere as in chambers, either with or without an assessor or assessors.

15. Causes and matters to be brought before Full Court

- (1) Subject to the provisions of subsection (6), all –
 - (a) applications for a new trial or rehearing of any cause or matter tried or heard by a judge, or to set aside any verdict, finding, or judgment found, given, or made in any cause or matter tried or heard by a judge;
 - (b) appeals from a judge, whether sitting in court or in chambers;

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- (c) rules *nisi* and orders to show cause returnable before a Full Court;
- (d) cases, points, and questions reserved by a judge for the consideration or judgment of a Full Court, or directed by a judge to be argued before a Full Court;
- (e)
- (f) trials at bar;
- (g) causes and matters which –
 - (i) this Act;
 - (ii) any Rule of Court made under this Act;
 - (iii) any Imperial Act passed after the commencement of this Act, or any Order or Rule of Court made thereunder;
 - (iv) any Act of the Parliament of Tasmania passed after the commencement of this Act, or any Order or Rule of Court made thereunder; or
 - (v) any Commonwealth Act –

requires to be heard and determined by a Full Court –

shall be heard and determined, or otherwise disposed of, by a Full Court.

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- (2) Subject to the Rules of Court, any cause or matter which is within the jurisdiction of the Court which is subject to this Act, but which is not by subsection (1) required to be heard and determined by a Full Court, may, with the special leave of a Full Court, be heard and determined by a Full Court in the first instance.
- (3) The provisions of subsection (2) shall extend and apply to any part of the jurisdiction of the Court therein mentioned, notwithstanding that the same is by this Act, or other the statute conferring such jurisdiction, expressed to be conferred on a judge of the Court, and not on the Court itself.
- (4) For the purpose of hearing and determining, or disposing of any cause or matter brought before it, a Full Court may exercise all or any part of the jurisdiction of the Court which is subject to this Act, and all such powers and authorities as are conferred upon it by this Act or the Rules of Court.
- (5) A Full Court may, when granting a rule *nisi* or order to show cause, make the same returnable before a judge of the Court, whether sitting in court or in chambers.
- (6) In any cause or matter pending before a Full Court or about to be brought before a Full Court, any order or direction incidental thereto, not involving the decision of the cause or matter, or any order or direction which may be necessary or proper to prevent prejudice to the rights or claims of any party to any such cause or matter, or of any person who is about to institute any

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cause or matter before a Full Court, may be made or given by a judge sitting in court or in chambers; but every such order or direction may be discharged or varied by a Full Court.

- (7) A Full Court may direct any cause or matter, or point or question in any cause or matter, pending before it, to be re-argued, or re-heard before final judgment.
- (8) –
- (a) In the case of an appeal from a judgment or order of a judge any party who is entitled to be heard on the hearing of the appeal shall (subject to the provisions of this subsection) be entitled as of right to object to the appeal being heard and determined by a Full Court consisting of only two judges, one of whom is the judge who gave or made the judgment or order which is the subject of the appeal;
- (b) In any case in which an appeal from a judgment or order of a judge comes on to be heard by a Full Court consisting of only two judges, one of whom is the judge who gave or made the judgment or order which is the subject of the appeal, every party entitled to exercise the right conferred by paragraph (a) who desires to exercise the same shall so inform the Court when the appeal is called on for hearing, and before the hearing thereof is commenced; and if any such party exercises such right the Court shall

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postpone the hearing of the appeal until such time as it can be heard by a Full Court consisting either of 3 judges or of two judges neither of whom is the judge who gave or made the judgment or order which is the subject of the appeal; and for that purpose the hearing of the appeal shall be adjourned either to a date to be then appointed or to a date to be thereafter appointed, and in the latter case when a date has been appointed notice thereof shall be given by the Clerk of the Court or other prescribed officer, in accordance with the Rules of Court, to all parties to the appeal;

- (c) Provided that, with the consent of all parties to the appeal, the same may be heard at any time, although the notice required by paragraph (b) has not been given, or if given, has not expired;
- (d) Provided, also, that any party to the appeal who has exercised the right conferred by paragraph (a) of this subsection may at any time, by notice in writing to the Clerk of the Court or other prescribed officer and to all other parties to the appeal, consent to the appeal being heard by a Full Court consisting of any two judges of the Court; and if all other parties to the appeal who have exercised such right as aforesaid give the like consent in the manner aforesaid, the Clerk of the Court or other prescribed officer shall again enter the appeal for

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hearing, and shall give notice thereof, in accordance with the Rules of Court, to all parties to the appeal, and the appeal may thereupon be heard and determined by any two judges of the Court;

- (e) The provisions of this subsection shall extend and apply to an appeal from part only of a judgment or order of a judge, as well as to an appeal from the whole of such a judgment or order.

(9) –

- (a) When the judges sitting as a Full Court are divided in opinion as to the decision to be given on any question –
 - (i) the question shall be decided in accordance with the decision of the majority, if there is a majority; but
 - (ii) if the Court is equally divided in opinion, the opinion of the Chief Justice, or, if he is absent, the opinion of the Senior Puisne Judge present, shall prevail, except in the case of an appeal from a judgment or order of a judge who is not sitting as a member of the Full Court which hears the appeal, in which case the judgment or order appealed from shall be affirmed;

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- (b) Provided that, if in the last-mentioned case the judge whose judgment or order is appealed from reports to the Court that he desires that the appeal shall be determined without regard to the fact that he has given or made the judgment or order, the opinion of the Chief Justice or Senior Puisne Judge present shall prevail;
- (c) The provisions of paragraph (a) shall extend and apply to any case in which, in accordance with the provisions of that paragraph, a judgment or order which is the subject of an appeal –
 - (i) is to be affirmed, but there is a division of opinion amongst the judges who heard the appeal as to whether the judgment or order should be affirmed *simpliciter* or with a variation; or
 - (ii) is to be affirmed with a variation, but there is a division of opinion amongst the judges who heard the appeal as to what the variation should be:

But in determining what the decision of the Court is in any such case, the opinion of all the judges who heard the appeal, and who shall give any opinion on any such question, shall be considered, notwithstanding that any such judge may

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be of opinion that the judgment or order should be reversed.

(10) In subsection (8) and subsection (9) the term

appeal includes any appeal which a Full Court has jurisdiction to hear and determine under Part V and any application which a Full Court has jurisdiction to hear and determine under section 39, and which is founded on any alleged misdirection or erroneous order, decision, or ruling of the judge, and any other application or proceeding to obtain a review of or calling in question any judgment, order, or other determination (whether final or otherwise) or any ruling or direction given or made by a judge in any cause or matter.

(11) In paragraphs (a), (b), and (d) of subsection (1) and subsection (10), the term

judge includes a judge sitting in court (whether with or without a jury or an assessor or assessors) and a judge sitting in chambers (whether with or without an assessor or assessors).

16. Causes and matters to be brought before single judge

(1) Subject to the provisions of this Act and the Rules of Court, all causes and matters within the jurisdiction of the Court which is subject to this Act which are not required by –

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-
- (a) this Act;
 - (b) the Rules of Court;
 - (c) any Commonwealth Act;
 - (d) any Imperial Act passed after the commencement of this Act, or any Order or Rule of Court made under any such Act; or
 - (e) any Act of the Parliament of Tasmania passed after the commencement of this Act, or any Order or Rule of Court made under any such Act –

to be heard and determined by a Full Court shall be heard, determined, and disposed of by a single judge in accordance with the provisions of this Act and the Rules of Court.

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

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

- (3) Subject to the provisions of subsection (1) of section 15 and subsection (2), and the Rules of Court, all the jurisdiction of the Court which is subject to this Act may be exercised by a single judge, whether sitting in court or in chambers.

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- (4) A single judge, whether sitting in court or in chambers, shall have and may exercise, with respect to any cause or matter brought before him in accordance with the provisions of this section, all the powers and authorities of the Court, and with respect to any other cause or matter the jurisdiction conferred by section 12, and such other jurisdiction, powers, and authorities of the Court as the circumstances may require to be exercised.

17. Reservation of cases and questions for determination by Full Court

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

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Part III – Sittings

PART III – SITTINGS

18A.

19. Business and sittings of Court

- (1) The Chief Justice is responsible for ensuring the orderly and expeditious discharge of the business of the Court and accordingly may, subject to this Act and after such consultation with the judges as is appropriate and practicable, make arrangements as to the judge or judges who is or are to constitute the Court in a particular matter or class of matters.
- (2) Sittings of the Court are to be held from time to time as required at the places at which the registries of the Court are established and at such other place as may be determined by the Chief Justice from time to time.

20. Reserved judgments

- (1) When any cause or matter, after being fully heard before a Full Court, is ordered to stand for judgment, it is not necessary that both or all judges before whom it was heard be present together in court to declare their opinions on the cause or matter, but the opinion of any of them may be reduced to writing and may be read by any other judge at any subsequent sitting of a Full Court at which judgment in the cause or matter is appointed to be delivered.

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- (2) In any such case the question is to be decided in the same manner, and the judgment of the Court has the same force and effect, as if the judge whose opinion is so read had been present in court and had declared his or her opinion in person.
- (3) Nothing in this section affects the practice of publishing in writing a judge's reasons for his or her opinion.

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Part IV – Trial

PART IV – TRIAL

26. Actions to be tried at civil trial sittings

- (1) Subject to the provisions of subsection (2) and subsection (3), and to the jurisdiction, powers, and authorities conferred on the Court and the several judges thereof by the *Commercial Arbitration Act 2011*, and to the Rules of Court, all actions and all questions and issues of fact therein shall be tried at a civil trial sittings.
- (2) Subject to the Rules of Court, any damages recoverable in an action, which are to be assessed by a judge sitting without a jury under an interlocutory judgment, may be assessed by a judge sitting in court (whether the sitting is a civil trial sittings or not) or in chambers.
- (3) The Rules of Court may provide for the assessment of any damages recoverable in any action, and the determination of any other question or issue of fact arising in any action, by an officer of the Court, or a judge of any inferior court of civil jurisdiction, or a referee with or without an assessor or assessors.
- (4) Nothing contained in subsection (3) shall be construed as limiting or restricting the power to make Rules of Court with respect to the trial of actions and of questions and issues of fact therein.

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27. Power of Full Court or judge to order any question to be tried at civil trial sittings

- (1) A Full Court, or a judge sitting in court or in chambers, may order any question or issue of fact arising in any cause which is not an action, or in any matter, to be tried at a civil trial sittings, and may adjourn the hearing or further hearing of such cause or matter until after the trial of such question or issue.
- (2) Subject to the Rules of Court, any such question or issue of fact may be ordered to be tried either with or without a jury, any statute or law to the contrary notwithstanding.
- (3) The Rules of Court may provide for the determination of any question or issue of fact arising in any cause which is not an action, or in any matter, by an officer of the Court, or a judge of any inferior court of civil jurisdiction, or a referee with or without an assessor or assessors.
- (4) Nothing in this section shall affect the jurisdiction, powers, or authorities of a Full Court or a judge under the *Commercial Arbitration Act 2011*, or the operation of section 37.

28. Transfer to inferior courts of civil jurisdiction of actions and counter-claims founded on contract or tort

- (1) In any action commenced in the Court where –

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- (a) the plaintiff's claim is founded either on contract or on tort, and the amount claimed or remaining in dispute in respect thereof does not exceed \$50 000, whether the action could or could not have been commenced in an inferior court of civil jurisdiction, and whether the defendant does or does not set up or intend to rely on a counter-claim, and whether the counter-claim, if any, is founded on contract or on tort, and whether the amount claimed on the counter-claim exceeds or does not exceed either of those sums;
- (b) the only matter remaining to be tried between the parties is a counter-claim, whether founded on contract or on tort, and whether the counter-claim, if it had been an action, could or could not have been commenced in an inferior court of civil jurisdiction, and the amount claimed or remaining in dispute in respect of the counter-claim does not exceed \$50 000; or
- (c) the plaintiff's claim is for the recovery of land, with or without a claim for rent or mesne profits by a landlord against a tenant, or any person holding or claiming by, through, or under a tenant, whose term has expired, or has been duly determined by notice to quit, or has become liable to forfeiture for non-payment of rent, and the action could

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have been commenced in an inferior court of civil jurisdiction –

either party may at any time apply to a judge for an order that the claim and counter-claim, if any, or, if the only matter remaining to be tried is a counter-claim, the counter-claim, shall be transferred –

- (d) to any inferior court of civil jurisdiction in which the action might have been commenced if the subject-matter and the amount thereof had been within the jurisdiction of such court;
- (e) if the only matter remaining to be tried is a counter-claim, to any inferior court of civil jurisdiction in which the counter-claim might have been commenced if it had been an action, and the subject-matter and the amount thereof had been within the jurisdiction of such court; or
- (f) to any inferior court of civil jurisdiction the judge may deem most convenient to the parties –

and the judge may thereupon, if he thinks fit, order the same to be so transferred accordingly.

- (1A) A judge may exercise the powers to transfer a claim and counter-claim or a counter-claim under subsection (1) where the amount claimed or remaining in dispute exceeds \$50 000 if all parties to the action agree to the transfer.

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- (2) Provided that no action or counter-claim shall be transferred under subsection (1) or (1A) to any inferior court of civil jurisdiction which is not competent to grant the remedy or relief of the nature which is sought by the action or counter-claim.
- (3) If it appears to a Full Court or judge that any prescribed application or proceedings may be more conveniently tried and determined in an inferior court of civil jurisdiction, the Full Court or judge may, at any time, make an order transferring the matter to, or directing that any issue necessary for determining the matter be tried in, the inferior court of civil jurisdiction specified in the order if –
 - (a) the amount of the debt or money, the value of the goods or chattels the subject of the prescribed application or the amount of the debt sought to be attached or for which execution is sought to be levied does not exceed \$50 000; or
 - (b) where the amount of the debt or money, the value of the goods or chattels the subject of the prescribed application or the amount of the debt sought to be attached or for which execution is sought to be levied is or exceeds \$50 000, all parties to the prescribed application or proceedings agree to the making of the order.
- (4) In subsection (3),

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prescribed application or proceedings means any application or proceedings in the Court by way of interpleader, or for the attachment of any debt, salary, wages or pay, to answer a judgment or order or for leave to issue execution, pursuant to the Rules of Court, against –

- (a) a person as being a member of a firm against which a judgment or order has been given or made, or for leave to issue execution, pursuant to the Rules of Court; or
 - (b) a person as being a member of any unincorporated society or association, or other unincorporated combination of persons in the nature of a society or association, against which, or any officer of which (as representing the society, association or other unincorporated combination of persons), a judgment or order has been given or made.
- (5) A court to which a matter has been transferred, or which is directed to try an issue necessary for the determining of a matter, under an order made under subsection (3) has jurisdiction to try and determine the matter or issue.

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29. Trial at civil trial sittings may be with or without a jury

(1) Subject to the Rules of Court, any action or any question or issue of fact to be tried at a civil trial sittings may be tried either with or without a jury, as may be ordered by the Court or a judge pursuant to the Rules of Court, any statute or law to the contrary notwithstanding.

(2)

30 - 31.

32. Act not to affect mode of giving evidence on jury trials, rules of evidence, or law as to juries

(1) Subject to the express provisions of this Act, nothing in this Act or the Rules of Court shall affect the mode of giving evidence by the oral examination of witnesses in trials with a jury, or the rules of evidence, or the law relating to jurymen and juries.

(2) Provided that nothing in this section shall –

(a) prejudice the operation of any Rules of Court made in pursuance of the express power conferred by this Act to make Rules of Court for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given;

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- (b) affect the power of the Court or a judge, for any special reason or reasons, to allow depositions or affidavits to be read, or the power to make Rules of Court for that purpose;
- (c) affect the power of the Court or a judge to issue or order the issue of a commission for, or to make an order for, the examination of any witness out of the jurisdiction of the Court, or to make an order for the examination upon oath or affirmation before the Court or a judge, or any officer of the Court, or a judge of an inferior court of civil jurisdiction, or an examiner or any other person at any place within the jurisdiction of the Court, of any witness or person in any case in which, notwithstanding subsection (1), it appears to the Court or judge necessary for the purposes of justice that such a commission, or any such order, should be issued or made, or the power to make Rules of Court for any such purpose;
- (d) affect the admissibility at any trial of any evidence taken on any such examination in any case in which such evidence would be admissible under the *Evidence Act 2001*, or to the Rules of Court, or any order made thereunder; or
- (e) affect the operation of section 29.

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33. Right to have issue for trial by jury submitted to jury with a proper and complete direction

- (1) Subject to the provisions of this section, and section 50, and the other provisions of this Act, the right of any party to an action or issue of fact, tried with a jury, to have the issue or issues of fact for trial by the jury submitted and left by the judge to the jury, with a proper and complete direction to the jury upon the law and as to the evidence applicable to each such issue of fact, may, on compliance with the Rules of Court regulating the terms and conditions (as to matters subsequent to the trial) on which proceedings for such purpose shall be allowed, be enforced by a Full Court under Part V.
- (2) Any party who is dissatisfied with the direction of the judge to the jury, on the ground that the same or any part thereof was a misdirection, may before verdict deliver to the judge a written exception to the direction; and any such exception shall (unless the judge gives a further direction to the satisfaction of such party) be entered upon or annexed to the copy of the pleadings, if any, delivered for the use of the judge at the trial, or shall be otherwise kept as a record in the proceedings, as the judge may direct.
- (3) But, except in the cases mentioned in subsection (8), the failure of any party to take exception, as provided by subsection (2), or otherwise, to any direction of the judge to the jury on the ground that the same or any part thereof was a misdirection, shall not preclude such party from

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applying for a new trial or appealing to a Full Court under Part V, or prejudice the rights of such party on the hearing of the application for a new trial or the appeal; and if any party does except as provided by subsection (2), or otherwise, to the direction he shall not (except in the cases mentioned in subsection (8)) on an application for a new trial or on appeal under Part V be confined to the grounds stated in the exception.

- (4) If any party is dissatisfied with the direction of the judge to the jury, on the ground that the same, although not a misdirection, is not a complete direction, such party shall before verdict, either in writing or orally, request the judge to give such further direction to the jury as such party thinks should be given to them.
- (5) But the fact that any party has not made such request as aforesaid shall not preclude such party from applying for a new trial or appealing to a Full Court under Part V; and the Full Court shall hear and determine the application or appeal, and may (subject to the provisions of section 50), if it thinks fit, exercise in favour of such party any of its powers under Part V.
- (6) For the purposes of this section the direction of the judge shall be deemed to include any questions submitted by the judge to the jury, and the term

misdirection shall include such an incomplete direction as amounts to a misdirection.

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- (7) A Full Court may, if it thinks fit, hear and determine any such proceeding as is in this section mentioned, notwithstanding that any Rule of Court has not been complied with.
- (8) But nothing in this section contained shall be construed as conferring on any party any right to require a Full Court to exercise in his favour any of the powers of a Full Court under Part V in any case in which such party has deliberately abstained from taking exception to any misdirection, or in which it appears to the Full Court that such party has, by reason of any consent or arrangement given or made at the trial or by reason of the manner in which he has presented or conducted his case at the trial, disentitled himself to require the Full Court to exercise any such power in his favour.

34. Recovery of interest on debts

- (1) Upon all debts or sums certain recovered in any action, or on the trial of and issue of fact, the jury, or (in cases where there is no jury) the judge, or (in the case of an assessment of damages) the jury, judge, officer of the court, judge of an inferior court of civil jurisdiction, or referee making the assessment, may allow interest to the party recovering such debt or sum at the prescribed rate –
 - (a) from the time when such debt or sum was payable if payable by virtue of some written instrument and at a date or time certain; or

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- (b) if payable otherwise, then from the time when demand of payment was made in writing, giving notice to the debtor that interest would be claimed from the date of such demand or any later date.
- (2) For the purposes of subsection (1), the prescribed rate is the rate per centum per annum that is from time to time specified in the Rules of Court.

35. Recovery of interest on debts

- (1) The jury, or (in cases where there is no jury) the judge, on any trial of, or the jury, judge, officer of the court, judge of an inferior court of civil jurisdiction, or referee on any assessment of damages in –
- (a) any action of conversion or trespass concerning any goods, may give damages in the nature of interest over and above the value of the goods at the time of the conversion or trespass;
 - (b) any action on any policy of insurance, may give damages in the nature of interest over and above the money recoverable on or under the policy.
- (2) Nothing in this section or in section 34 shall preclude a jury or a judge or an officer of the Court, or a judge of an inferior court of civil jurisdiction, or a referee from giving interest, or damages in the nature of interest, in any case in

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which the same are now payable or can be awarded.

35A. Interest on judgments

- (1) Unless otherwise agreed by the parties or provided for under section 34 or 35, the court or a judge, when making a judgment requiring the payment of an amount of money, may order that the amount, or part of the amount, carries interest at rate not exceeding the prescribed rate for the whole or any part of the period commencing on the day after the day on which the cause of action arose and ending on the day on which the judgment is entered.
- (2) Subsection (1) does not –
 - (a) authorise the giving of interest on interest; or
 - (b) apply in relation to any amount on which interest is payable as of right whether because of an agreement or otherwise; or
 - (c) affect the damages recoverable for the dishonour of a bill of exchange; or
 - (d) limit the operation of any other enactment or rule of law providing for the award of interest.
- (3) For the purposes of subsection (1), the prescribed rate is the rate per centum per annum that is from time to time specified in the Rules of Court.

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36. Questions of foreign law to be decided by judge

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

37. Court to have power to call in assessors

- (1) A Full Court or a judge may, in any cause or matter, if it or he thinks it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter, or order the same to be tried and heard, wholly or partly with the assistance of such assessor or assessors; but the Court or judge, or the officer of the Court, judge of the inferior court of civil jurisdiction, or referee whom such assessor or assessors has or have been called in to assist, shall not be bound by the opinion or advice of any such assessor. The remuneration, if any, to be paid to such assessor or assessors shall be determined by the Court or judge, and shall be paid out of moneys to be provided by Parliament for that purpose.
- (2) The Rules of Court may require any of the parties to any cause or matter which is to be tried or heard with an assessor or assessors to pay into the registry such fee or fees as may be prescribed by the Rules of Court for or towards the

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remuneration of the assessor or assessors, and, subject to any order of the Court or a judge, any fees so paid shall be costs in the cause or matter.

37A. Power of Court to refer action, &c., to arbitrator

- (1) The Court or a judge may, at any time, with the consent of all the parties interested, order that any action, cause or matter, or any question or issue of fact arising in any action, cause or matter be referred to an arbitrator, agreed on by the parties, to be tried before that arbitrator.
- (2) For the purposes of subsection (1), where a party interested is under a disability, the consent of the guardian *ad litem* or the next friend of that party shall be treated as the consent of that party.
- (3) The award of an arbitrator to whom any action, cause or matter or any question or issue arising in any action, cause or matter has been referred under subsection (1) shall, for all purposes, unless set aside by the Court or a judge, be treated as the verdict of a jury.

37B. Power of Court to compel attendance before arbitrator

The Court or a judge may order that –

- (a) a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall issue to compel the attendance before an arbitrator of a witness wherever that

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witness may be within the jurisdiction;
and

- (b) a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an arbitrator.

37C. Statement of special case for opinion of Court

An arbitrator may, at any stage of the proceedings in relation to any action, cause or matter or any question or issue of fact arising in any action, cause or matter referred to the arbitrator, and shall, if so directed by the Court or a judge, state in the form of a special case for the opinion of the Court or a judge any question of law arising in the course of those proceedings.

37D. Examination of parties and witnesses

- (1) In all cases of reference to arbitration under this Act, the Court or a judge may –
 - (a) make an order or issue a commission for the examination of a party to that reference, or a witness whose evidence, by reason of absence, intention to depart from the State, illness, age, distance of residence, or other cause, would otherwise be liable to be lost; and
 - (b) give all such directions as to the time, place and manner of examination and other matters connected with the

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examination as the Court or judge thinks fit.

- (2) Every order or commission made or issued by the Court or a judge under subsection (1) may be made or issued in the same manner as orders are made or commissions are issued for the examination of witnesses in any cause in the Court in its common law jurisdiction, or as near to that manner as may be practicable.
- (3) A person authorized to take the examination of parties or witnesses under any order or commission made or issued by the Court or a judge under subsection (1) shall take the evidence upon oath, or on affirmation in cases where affirmation is allowed by law to be administered in an action.

37E. Persons not compelled to answer certain questions

A person shall not be compelled by an arbitrator or under or by any order or commission made or issued under section 37D to answer any question that the person would not be compelled to answer at trial.

37F. Evidence received by arbitrator

All evidence taken under any order or commission made or issued under section 37D shall be received by an arbitrator saving all just exceptions, in the same manner as evidence taken under any order or commission made or issued by the Court in any action, cause or

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matter pending in that Court is received at the trial of that action, cause or matter.

37G. Costs of arbitration

- (1) Subject to an order of the Court or a judge, the costs of an arbitration held pursuant to an order made under this Act (including the fees and expenses of the arbitrator) shall be at the discretion of the arbitrator who may –
 - (a) direct to and by whom and in what manner the whole or any part of those costs shall be paid; and
 - (b) tax or settle the amount of costs to be so paid or any part of those costs; and
 - (c) award costs to be taxed or settled as between party and party or as between solicitor and client.
- (2) Any costs of an arbitration held pursuant to an order made under this Act shall, except insofar as they are taxed or settled by the arbitrator, be taxable in the Court in accordance with the Rules of Court.
- (3) If an order as to costs is not made by an arbitrator with respect to an arbitration held under this Act, a party to that arbitration may, within 21 days of the publication of the award, apply to the arbitrator for directions as to the payment of those costs.

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- (4) On an application under subsection (3), the arbitrator shall, after giving such notice of hearing as the arbitrator thinks fit to the parties to the arbitration and, after hearing any such party who wishes to be heard, amend the award by adding to it such directions as the arbitrator may think proper with respect to the payment of the costs of the arbitration.

38.

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39. Applications for new trial or to set aside verdict, &c.

(1) Subject to the provisions of this Act, a Full Court shall have jurisdiction to hear and determine applications –

(a) for a new trial; or

(b) to set aside any verdict, finding, or judgment –

in any cause or matter tried by or before a judge, but every such application shall be subject to any Rules of Court regulating the terms and conditions (as to matters subsequent to the trial) on which such applications may be made.

(2) A Full Court may, if it thinks fit, hear and determine any such application notwithstanding that any such Rule of Court has not been complied with.

(3) Subject to the provisions of this Act, any application for a new trial may be made on any ground on which a new trial could be ordered in an action at law immediately before the commencement of the *Legal Procedure Act 1903*.

(4) A new trial may be ordered as to part only of any matter in controversy or as to some or one only of the parties, or as to any question or issue without disturbing any finding or decision as to

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any other part of the controversy or any other party, or on any other question or issue, and final judgment may be given as to any such other part or party or on any such other question or issue.

(5) –

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

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authorized by this Act or the Rules of Court;

- (b) Notwithstanding anything contained in paragraph (a) of this subsection a Full Court on the hearing of any application for a new trial in any case in which a verdict has been found by a jury, if it is satisfied –
- (i) that it has before it all the facts, and that no further material evidence could be produced at another trial; and
 - (ii) that the verdict was one which a jury, viewing the whole of the evidence reasonably, could not properly find –

shall enter judgment for the party for whom the verdict should have been given at the trial, and for that purpose may exercise any of its powers under paragraph (a);

- (c) Provided that if a Full Court, in the exercise of the powers conferred by paragraph (a) or paragraph (b), gives or enters judgment for a party in any cause or matter which has been tried by a jury, and any damages have to be assessed, any party interested in the assessment of the damages may require the same to be assessed by a jury.

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- (6) Except as may be otherwise provided by the Rules of Court every application –
- (a) for a new trial; or
 - (b) to set aside a verdict, finding, or judgment –

in any cause or matter where there has been a trial by a judge sitting without a jury, shall be made by way of appeal to a Full Court in accordance with the Rules of Court relating to appeals from a judge to a Full Court.

40. Appeals

- (1) Subject to the provisions of this Act, a Full Court shall have jurisdiction to hear and determine appeals from all judgments, orders, and other determinations (whether final or otherwise) given or made by a judge, whether sitting in court or in chambers, and if in court whether with or without a jury or an assessor or assessors, and if in chambers whether with or without an assessor or assessors, in any cause or matter (including any proceedings for or on, or in connection with an order of review under the *Judicial Review Act 2000* or a writ of *habeas corpus*).
- (2) Every appeal shall be subject to any Rules of Court regulating the terms and conditions on which appeals may be brought, but no such Rule of Court shall qualify or otherwise affect the operation of section 33, except as to matters subsequent to the trial.

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- (3) But a Full Court may, if it thinks fit, hear and determine an appeal from any such judgment, order, or determination, notwithstanding that any such Rule of Court has not been complied with.

41. Appeal in cases where jurisdiction is discretionary or exercisable as result of judge’s opinion

Subject to the provisions of sections 43, 44, and 45, and to the other provisions of this Act, an appeal shall lie to a Full Court from any judgment, order, or other determination (whether final or otherwise) given or made by a judge, whether sitting in court or in chambers, in the exercise of any discretionary jurisdiction, or any jurisdiction conferred by any statute, or Order or Rule of Court which is so expressed as to empower or require the judge to give or make such judgment, order, or other determination as the result of his opinion on any matter, or if in his opinion it should be given or made.

42. Persons by whom appeals may be instituted

- (1) Subject to the provisions of this Act, an appeal from any such judgment, order, or other determination as is mentioned in section 40 or section 41 may be instituted –
- (a) without the leave of a Full Court or the judge who gave or made the judgment, order, or other determination, by –
- (i) any party to the cause or matter;

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- (ii) any person who has been ordered to be bound by such judgment, order, or determination;
 - (iii) any person who has been served with notice of the judgment, order, or determination pursuant to any order or direction made or given by the Court or a judge under the Rules of Court; or
 - (iv) any person who would have been entitled without leave to appeal from the judgment, order, or determination if this Act had not passed;
- (b) with the leave of a Full Court, by any person who is not entitled to appeal under paragraph (a), but who is aggrieved or whose interests are affected by the judgment, order, or determination.
- (2) A Full Court may grant leave to any person to appeal under paragraph (b) of subsection (1) notwithstanding that such person could not have been made a party to the cause or matter in which the judgment, order, or other determination to be appealed from was given or made.

43. Cases in which no appeal lies

No appeal shall lie to a Full Court from any judgment, order, or other determination of a judge, whether sitting in court or in chambers –

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- (a) given or made by the consent of the parties;
- (b) given or made by the judge as *persona designata*;
- (c) given or made in the exercise of jurisdiction which is consultative or advisory only, and not judicial;
- (d) which contains an undertaking not to appeal;
- (e) granting an extension of time for appealing from any judgment, order, or determination;
- (f) ordering the discharge of any person under a writ of *habeas corpus*, or on an application for a writ of *habeas corpus*, from any illegal restraint or confinement, or determining the illegality of the restraint or confinement of any person and his right to liberty although the judgment or order does not direct his discharge;
- (g) granting a writ of *habeas corpus* or an order for a writ of *habeas corpus* in any criminal cause or matter;
- (h) admitting or refusing to admit any person to be a party to any proceeding in the Court as a poor person;
- (i) granting unconditional leave to defend an action;

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- (j) making absolute any decree for the dissolution, or pronouncing the nullity, of a marriage, in favour of any party who, having had time and the opportunity to appeal from the decree *nisi* on which such decree absolute is founded, has not appealed therefrom;
- (k) given or made in a summary manner in any interpleader proceeding where the amount in dispute or the value of the goods seized does not exceed \$100.

44. Appeals as to costs only, and appeals by a person admitted to sue or defend as a poor person

- (1) No appeal shall lie to a Full Court from any judgment or order given or made by a judge, whether sitting in court or in chambers, as to costs only, which are by any statute or any Order or Rule of Court left to the discretion of the judge, except –
 - (a) by leave of the judge giving such judgment or making such order;
 - (b) in cases in which the judge has declined or failed to exercise the discretion; or
 - (c) in cases in which the judge has proceeded on a wrong principle or otherwise contrary to law, or on irrelevant or insufficient materials, or has failed to consider any material fact.

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- (2) No person who has been admitted to institute or defend or be a party to any proceeding in the Court as a poor person, shall be permitted to appeal to a Full Court or to apply to a Full Court for a new trial as a poor person, except with the leave of the judge by or before whom the cause or matter was heard or tried, or of a Full Court.

45. Appeals from judgments given in exercise of discretionary jurisdiction

- (1) A Full Court, on the hearing of any appeal from any judgment, order, or other determination (whether final or otherwise) of a judge, shall not reverse or vary any adjudication of the judge which is, or purports to be, only the exercise of a discretion which the judge was entitled by law to exercise, unless it appears to the Full Court that –
- (a) the judge has, in fact, declined or failed to exercise the discretion;
 - (b) the judge has proceeded on a wrong principle or otherwise contrary to law, or on irrelevant or insufficient materials, or has misapprehended the facts or has failed to consider any material fact;
 - (c) the adjudication is founded wholly or in part on an erroneous finding of fact or an erroneous determination in point of law; or
 - (d) by reason of further evidence received by the Full Court in exercise of the powers

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conferred by section 48, or some special circumstance, the adjudication should be reversed or varied.

- (2) Nothing in this section contained shall limit or restrict the powers of a Full Court on the hearing of an appeal from a judgment or order of a judge decreeing or ordering or refusing to decree or order the specific performance of any contract, or granting or refusing any injunction or order for an injunction, or appointing or refusing to appoint a receiver, or granting or refusing any other equitable remedy or relief the granting of which is discretionary.
- (3) Nothing in this section contained shall in any manner affect the provisions of section 44.

46. Appeal to be by way of rehearing

Subject to the provisions of this Act every appeal to a Full Court shall be by way of rehearing.

47. Powers of Full Court on hearing of appeals

- (1) Subject to the provisions of this Act, a Full Court, on the hearing of every appeal, shall have and may exercise all the jurisdiction, powers, and duties of the Court, whether as to amendment or otherwise, and shall have power to draw inferences of fact not inconsistent with the findings of the jury, if any, and to affirm, reverse, or vary, as to all or some or any one of the parties, any judgment, order, or determination appealed from, and to give any

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judgment or make any order or determination which ought to have been given or made, and to grant a new trial in any cause or matter in which there has been a trial (whether with or without a jury), and to make such further or other order as the case may require.

- (2) On the hearing of every appeal from a judgment given, or an order or other determination made, by a judge sitting without a jury, a Full Court shall have full power to review the judgment, order, or determination appealed from on questions of fact as well as law.
- (3) On the hearing of any appeal a Full Court, if it is satisfied that no injustice will thereby be done, may allow any party to raise any point of law which was not raised at the trial, and may determine the appeal on any such point.
- (4) Notwithstanding anything contained in subsection (1), on the hearing of any appeal in any case in which a verdict has been found by a jury, a Full Court, if it is satisfied –
 - (a) that it has before it all the facts, and that no further material evidence could be produced at another trial; and
 - (b) that the verdict was one which a jury, viewing the whole of the evidence reasonably, could not properly find –

shall enter judgment for the party for whom the verdict should have been given at the trial, and for that purpose may exercise any of its powers under section 39(5)(a), but if any damages have

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to be assessed any party interested in the assessment of the damages may require the same to be assessed by a jury.

48. Power of Full Court to receive further evidence

- (1) On the hearing of any appeal a Full Court shall have power to receive further evidence upon questions of fact, and may take such evidence by oral examination in court or by affidavit, or may direct the same to be taken by a judge or an examiner, or a commissioner, or a judge of an inferior court of civil jurisdiction.
- (2) Upon appeals in interlocutory applications, or in any case as to matters which have occurred after the date of the judgment, order, or other determination from which the appeal is brought, such further evidence may be given without special leave.
- (3) Upon any appeal from a judgment, order, or other determination given or made after the trial of any cause or matter on the merits, such further evidence (except as to matters which have occurred after the date of judgment, order, or determination) shall be admitted only by special leave of the Full Court, which shall only be granted in cases in which –
 - (a) the evidence was not in the possession of the party seeking to have it admitted, and could not by proper diligence have been obtained by him, before the termination of the trial; or

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- (b) there is some other special circumstance which, in the opinion of the Full Court, justifies the admission of it.

49. Powers of Full Court where only part of judgment appealed from

All or any of the powers mentioned in sections 47 and 48 may be exercised notwithstanding that the appeal may be from part only of the judgment, order, or other determination appealed from; and such powers may be exercised in favour of any party to the cause or matter although such party may not have appealed from such judgment, order, or determination.

50. When new trial not to be granted

- (1) Notwithstanding anything in this Part contained a new trial shall not be ordered –
 - (a) on the ground that the trial judge misdirected himself or the jury (as the case may be), or that evidence was improperly received or rejected, or (in the case of a trial by jury) because the judge failed to direct the jury on any question or matter which he was not asked to direct them on, or because the verdict of the jury was not taken upon a question which the trial judge was not asked to leave to them, unless in the opinion of the Full Court some substantial wrong or miscarriage has been thereby occasioned; and if it

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appears to the Full Court that such wrong or miscarriage affects part only of any matter in controversy, or some or one only of the parties, such Court may exercise the power conferred by section 39(4);

- (b) by reason of the ruling of the trial judge that the stamp upon any document is sufficient or that the document does not require a stamp;
- (c) on the ground of the discovery of a new fact or fresh evidence unless –
 - (i) the evidence of such new fact (although not admissible as evidence on any issue previously raised) or such fresh evidence –
 - (A) appears to the Full Court to be such as is to be believed, and if believed would (although not admissible as evidence on any issue previously raised) form a determining factor in the result of the cause or matter or the part thereof to which the new fact or fresh evidence relates; and
 - (B) could not by proper diligence have been

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discovered by the party applying for a new trial before the termination of the trial, or, if it was discovered by him immediately before the commencement of, or during, trial, an application to the trial judge for leave (if necessary) to raise the new fact and adduce evidence thereof, or to adduce the fresh evidence (as the case may be), or for an adjournment (if necessary) to enable the party to adduce evidence of the new fact or the fresh evidence, was refused;

- (ii) the case is one to which paragraph (d) is applicable; or
 - (iii) the verdict, finding, judgment, order, or determination was obtained by, or is affected with, fraud;
- (d) on the ground of surprise at the trial with respect to the evidence, unless the party applying for the new trial establishes –
- (i) the fact of surprise at the trial;

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- (ii) that he did not elect to proceed with the evidence which he had at his command at the trial; and
 - (iii) that there is relevant evidence available which, if it had been adduced at the trial, would probably have affected the result thereof.
- (2) Notwithstanding anything in this Part contained, no new trial shall be ordered in an action for dissolution of marriage or nullity of marriage, nor shall any verdict, finding, or decree found, given, or made in any such action be set aside after decree absolute, except on an appeal from such decree absolute.

51. Judgment obtained by fraud may be set aside by application for new trial or an action

- (1) Subject to the provisions of section 50(2), any verdict, finding, judgment, order, or determination obtained by or affected with fraud may be impeached, either by an application for a new trial or to set aside the verdict, finding, judgment, order, or determination, or by an action instituted for the purpose of having the verdict, finding, judgment, order, or determination set aside.
- (2) Provided that, in any case in which the verdict, finding, judgment, order, or determination is impeached by an application for a new trial or to set aside a verdict, finding, judgment, order, or determination, the Full Court may direct an

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action to be instituted for the purpose of having the verdict, finding, judgment, order, or determination set aside.

52.

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AGAINST, THE CROWN**

53. Interpretation

In this Part, unless the contrary intention appears

—

a trust for charity generally includes not only a trust for charity in general but also any trust for any charitable object or purpose, other than a particular charity, but does not include “a trust for a public purpose” as defined by section 59;

charitable trust and *trust for charity* include any devise, bequest, gift, or other disposition (including an oral trust), creating a trust in favour of charity, whether charity generally or a particular charity;

charity generally includes not only charity in general but also any charitable object or purpose other than a particular charity, but does not include “a trust for a public purpose” as defined by section 59;

charter includes any letters patent, order-in-council, or other instrument whatsoever made, granted, or issued by the Government of this State;

disposition includes any devise, bequest, trust, or gift, whether the same is or is expressed to operate or take effect

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immediately or *in futuro*, and whether the estate or interest created or disposed of is vested or contingent, and includes a disposition creating, granting, transferring, or passing any executory interest or any possibility coupled with an interest;

interference with a public right and *interference with the public right* mean any omission to perform a public duty which the Court has jurisdiction to enforce the performance of, and any act which the Court has jurisdiction to restrain as being a public nuisance or other injury to the public;

particular charity means a specified individual charity but does not include “a trust for a public purpose” as defined by section 59;

person means any individual or individuals and (subject to the negative provision of this definition) any body corporate, but does not include a public authority or a public officer;

protection of any public right includes the enforcement of any public duty which the Court has jurisdiction to enforce performance of, and the prevention of any public nuisance or other injury to the public which the Court has jurisdiction to restrain, and the restraining of the continuance or repetition of any public

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nuisance or other such injury to the
public as aforesaid;

statute means any Act of the Parliament of
Tasmania.

The terms “charity” and “charitable” are used in
their legal sense.

54.

**55. Actions by the Crown in respect of rights which do
not directly concern the Crown**

(1) Except in cases where it is otherwise provided
(either expressly or by implication) by this Act
or some other statute (whether passed before or
after the commencement of this Act), or where
some special provision is made by some other
statute (whether passed before or after the
commencement of this Act), all actions –

(a) for the protection of any public right,
including any action to restrain any
person, public authority, or public officer
from contravening or exceeding any
power or authority conferred upon such
person, public authority, or public officer
by any statute or charter, and the
contravention or exceeding of which
tends to the public injury, or from
contravening or unlawfully evading any
provision for the protection of the public
contained in any statute or charter;

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- (b) on behalf of the Government of this State in respect of any other right or interest which does not directly concern His Majesty in right of this State, but which is enforceable by action on his behalf –

shall be instituted by and in the name of the Attorney-General, or by some person, public authority, or public officer as relator in the name of the Attorney-General, and not otherwise.

- (2) Subject to the Rules of Court, every such action shall be instituted and prosecuted in the same form and manner as an action between subject and subject, and not otherwise.
- (3) But nothing in this section contained shall preclude any person from instituting and prosecuting an action in his or its own name (and it is hereby declared that a person is so entitled to sue) in any of the following cases:
 - (a) Where the contravention or exceeding of any such power or authority as is mentioned in subsection (1)(a), or the contravention or unlawful evasion of any provision for the protection of the public contained in any statute or charter, or any other interference with a public right, involves or will involve an interference with or the violation of some private right of such person;
 - (b) Where, although no private right of such person is interfered with or violated, he or it has suffered, or will suffer, in

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respect of a public right, and from the interference therewith, particular damage, which is direct and substantial, and peculiar to himself or itself, or beyond that which has been or will be suffered by the public generally;

- (c) Where a statute confers on such person some special protection or benefit, and the action is instituted in respect of or to prevent a breach of any provision in such statute conferring such protection or benefit.
- (4) And nothing in this section contained shall preclude any public authority or public officer from instituting and prosecuting an action in its or his own name (and it is hereby declared that any public authority or public officer is so entitled to sue) in any of the following cases:
- (a) Where the action is brought to prevent injury to, or to recover damages in respect of any injury to, any property belonging to, or vested in, or under the control or management of, such public authority or public officer, or to recover damages in respect of, or to restrain, any nuisance which injuriously affects such public authority or public officer as owner or occupier of such property, or in respect of its or his control or management thereof;
 - (b) Where such public authority or public officer is by any statute invested or

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charged with the control or management of any property or any undertaking, operation, function, or matter of public concern, and the action is instituted in respect of or to prevent an interference with that control or management;

- (c) Where a statute confers on such public authority or public officer some special protection or benefit, and the action is instituted in respect of or to prevent a breach of any provision in such statute conferring such protection or benefit.
- (5) But subsection (4)(b) shall not be so construed as to authorize a public authority or public officer to institute an action in its or his own name for the purpose of enforcing any by-law or regulation made by such public authority or public officer, or otherwise putting in suit any public wrong, except in cases where the right to institute an action in its or his own name for any such purpose is conferred on it or him (either expressly or by implication) by some statute (whether passed before or after the commencement of this Act).
- (6) In any action instituted by and in the name of the Attorney-General, or by any person, public authority, or public officer, as relator in the name of the Attorney-General, for the protection of any public right, including any action to restrain any person, public officer, or public authority from contravening or exceeding any power conferred upon him or it by any statute or charter, and the contravention or exceeding of

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which tends to the public injury, or from contravening or unlawfully evading any provision for the protection of the public contained in any statute or charter, it shall not be necessary to allege or prove any actual injury to the public.

56. Actions to establish trust for charity generally

- (1) Subject to the provisions of subsection (3), every action for a declaration that any property is subject to, or for any judgment or order to establish or enforce the execution of, a trust for charity generally, or for any particular charity which cannot be represented, or properly represented, in such action, shall be instituted by and in the name of the Attorney-General, or by some person as relator in the name of the Attorney-General, and not otherwise.
- (2) Subject to the Rules of Court, every such action shall be instituted and prosecuted in the same form and manner as an action between subject and subject, and not otherwise.
- (3) But nothing in this section shall operate to preclude any person otherwise entitled so to do from instituting in his or its name any action or any other original proceeding, authorized by any statute or the Rules of Court, for the administration of the estate of any deceased person, or for the administration or execution of any trust, or for the determination of any question or matter arising in the administration of the estate of a deceased person, or in the

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administration or execution of any trust, notwithstanding that such action or other original proceeding seeks or involves the determination of the question, whether the object or purpose of any disposition is charitable, or of the question whether any property which is a subject of the action or other original proceeding is or is not subject to any trust for charity, or seeks or involves the administration or execution of any trust for charity; but, in any case in which the action or other original proceeding seeks or involves the determination of the question whether the object or purpose of any disposition is charitable, or whether property which is a subject of the action or other original proceeding is or is not subject to a trust for, or seeks or involves the administration or execution of a trust for, charity generally, or any particular charity, which is not or cannot be represented, or properly represented, in the action or other original proceeding, the Attorney-General shall be made a defendant to the action or other original proceeding.

57. Actions to recover or protect property subject to trust for charity

- (1) Except in cases where it is otherwise provided (either expressly or by implication) by some other statute (whether passed before or after the commencement of this Act), or where some special provision is made by some other statute (whether passed before or after the commencement of this Act), every action to recover or protect any property subject to a trust

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for charity generally, or for any particular charity which cannot be represented or properly represented in such action, shall be instituted by and in the name of the Attorney-General, or by some person as relator in the name of the Attorney-General or by and in the name of any person or public officer in whom such property is vested subject to such trust, and not otherwise.

- (2) Except in cases where it is otherwise provided (either expressly or by implication) by some other statute (whether passed before or after the commencement of this Act), or where some special provision is made by some other statute (whether passed before or after the commencement of this Act), every action to restrain or remedy any abuse or misapplication or illegal administration of any property subject to any charitable trust shall be instituted by and in the name of the Attorney-General, or by some person or public officer as relator in the name of the Attorney-General, or by and in the name of some person interested in the administration of the trust, and not otherwise.
- (3) Subject to the Rules of Court every such action which is instituted by and in the name of the Attorney-General or by some person as relator in the name of the Attorney-General, shall be instituted and prosecuted in the same form and manner as an action between subject and subject, and not otherwise.
- (4) In any case in which any such action as is mentioned in subsection (1) is instituted by and in the name of any person or public officer in

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whom the property subject to the trust is vested, or in which any such action as is mentioned in subsection (2) is instituted by and in the name of some person interested in the administration of the trust, the Attorney-General shall be made a defendant to the action.

58. Cases in which Attorney-General is required to be made a party or cited

- (1) Subject to the provisions of subsection (4), and of section 62, and the Rules of Court, the Attorney-General shall be made a party to, or be cited to see proceedings in (according to the form of the proceeding), every original proceeding not instituted in his name –
 - (a) which is instituted for the purpose of obtaining probate, or the revocation of probate, of any will or instrument propounded as, or alleged to be, a will which contains any disposition in favour of, or which might operate in favour of, charity generally;
 - (b) which is instituted for the purpose of obtaining any judgment or order as to the validity of, or which would involve the determination of the question of the validity of, any will or instrument propounded as, or alleged to be, a will, or any deed or other instrument whatsoever, which contains any disposition in favour of, or which might operate in favour of, charity generally;

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- (c) which is instituted for the purpose of obtaining probate, or the revocation of probate, of any will or instrument propounded as, or alleged to be, a will which contains any disposition in favour of, or which might operate in favour of, any particular charity, if for any reason any such charity which might be affected by the proceeding cannot be represented or properly represented in the proceeding;
- (d) which is instituted for the purpose of obtaining any judgment or order as to the validity of, or which would involve the determination of the question of the validity of, any will or instrument propounded as, or alleged to be, a will, or any deed or other instrument whatsoever which contains any disposition in favour of, or which might operate in favour of, any particular charity, if for any reason any such charity which might be affected by the proceeding cannot be represented or properly represented in the proceeding;
- (e) which is instituted for the purpose of obtaining any judgment or order as to whether any devise, bequest, trust, gift, or other disposition purported to be made or created by any will, deed, or other instrument whatsoever, or any oral trust, in favour of charity generally, or of any particular charity, which cannot be represented or properly represented in the

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proceeding, is a valid disposition, or as to whether any property, the subject of any disposition for any charitable purpose is applicable *cy-pres*, or for the purpose of obtaining any judgment or order as to the construction of, or which would involve the construction of, any devise, bequest, trust, gift, or other disposition made or created by any will, deed, or other instrument whatsoever, or any oral trust, and which devise, bequest, trust, gift, or other disposition operates or might operate in favour of charity generally;

- (f) which is instituted for the purpose of obtaining any judgment or order as to the construction of, or which would involve the construction of, any devise, bequest, trust, gift, or other disposition made or created by any will, deed, or other instrument whatsoever, or any oral trust, and which devise, bequest, trust, gift, or other disposition operates or might operate in favour of any particular charity, if for any reason any such charity which might be affected by the proceeding is not or cannot be represented or properly represented in the proceeding;
- (g) for the application *cy-pres* of any property subject to any charitable trust, or the settlement, alteration, or variation of any scheme for the administration of, or of any rules or regulations for the internal conduct or management of any

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charitable trust, or for any other purpose affecting the administration of or otherwise touching or concerning any charitable trust;

- (h) to which the heir-at-law of any deceased person is a necessary party, if such heir-at-law cannot be found, or if there is no heir-at-law of such deceased person;
 - (i) to which the next-of-kin of any deceased person are necessary parties, if such next-of-kin cannot be found, or if there are no next-of-kin of such deceased person;
 - (j) in which any judgment or order might be given or made which would affect or concern some right or interest of His Majesty in right of this State.
- (2) For the purposes of this section it shall be immaterial that no relief or claim is sought or made against His Majesty in right of this State.
 - (3) Subject to the provisions of subsection (4) nothing in this section shall affect the existing law and practice of the Court as to other cases in which the Attorney-General is required to be made a party to any proceeding in the Court or to be cited to see any proceeding in the Court.
 - (4) It shall not be necessary to have a scheme settled in any case in which the subject-matter of a trust for charity generally is money (whether a residue, a sum in gross, or income), the application or distribution of which is committed to a specified person, or specified persons, who

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is or are clothed (whether by the terms of the trust or otherwise) with an absolute discretion with respect to such application or distribution, but nothing in this subsection contained shall exclude, restrict, or qualify the jurisdiction or power of the Court or any judge thereof to direct a scheme in any such case or shall affect the powers of the Court or a judge under section 63.

59. Actions for declaration that property is subject to a trust for public purposes

- (1) Except in cases where it is otherwise provided (either expressly or by implication) by some other statute (whether passed before or after the commencement of this Act), or where some special provision is made by some other statute (whether passed before or after the commencement of this Act), every action instituted for a declaration that any property is subject to a trust for a public purpose as defined in this section, shall be instituted by and in the name of the Attorney-General, or by some person, public authority, or public officer as relator in the name of the Attorney-General, and not otherwise.
- (2) Subject to the Rules of Court, every such action shall be instituted and prosecuted in the same form and manner as an action between subject and subject, and not otherwise.
- (3) For the purpose of this section and section 60 all rates, taxes, duties, assessments, and other funds and moneys whatsoever levied, raised, collected,

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or received under or by virtue of any statute for any public purpose, and any fund formed from the proceeds of any such rate, tax, duty, assessment, fund, or moneys, and all property whatsoever which is required by any statute to be applied or used for any public purpose, shall be deemed to be property subject to a trust for a public purpose.

- (4) But nothing in this section or in section 60 shall be so construed as to confer on the Court or any judge thereof any jurisdiction which was not vested in the Court immediately before the commencement of this Act.

60. Actions relating to administration of property subject to trust for public purposes

- (1) Except in cases where it is otherwise provided (either expressly or by implication) by some other statute (whether passed before or after the commencement of this Act), or where some special provision is made by some other statute (whether passed before or after the commencement of this Act), every action –
- (a) for any judgment or order to enforce the execution of any trust in respect of any property which is subject to a trust for a public purpose, as defined in section 59, shall be instituted by and in the name of the Attorney-General, or by some person, public authority, or public officer, as relator in the name of the Attorney-General, and not otherwise;

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- (b) to restrain or prevent any abuse, misapplication or illegal administration of any such property as is mentioned in paragraph (a), shall be instituted by and in the name of the Attorney-General, or by some person, public authority, or public officer as relator in the name of the Attorney-General, or (if the property, in respect of the abuse, misapplication, or illegal administration of which the action is instituted, is vested in or is under the control or management of any public authority) by and in the name of some person who has an interest in such public authority, either by reason of being entitled to vote at or take part in the election or appointment of its members or officers, or by reason of being liable to any rate, tax, assessment, duty, or charge levied, imposed, or made by such public authority or on some other ground, and not otherwise;

- (c) for any judgment or order relating to the application or administration of any such property as is mentioned in paragraph (a) (not being an action for any of the purposes mentioned in paragraph (a) or paragraph (b)), shall be instituted by and in the name of the Attorney-General, or by and in the name of some person, public authority, or public officer as relator in the name of the Attorney-General, or by and in the name of the person, public authority, or public officer

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in whom or which the property is vested,
and not otherwise.

- (2) Subject to the Rules of Court, every such action instituted by and in the name of the Attorney-General or by some person as relator in the name of the Attorney-General shall be instituted and prosecuted in the same form and manner as an action between subject and subject, and not otherwise.
- (3) In any case in which any such action is instituted by and in the name of the person, public authority, or public officer in whom or which such property is vested, or some person having such an interest as aforesaid, the Attorney-General shall be made a defendant to the action.

61. Relators

- (1) No action for any of the purposes mentioned in this Part shall be instituted by any person, public authority, or public officer as relator in the name of the Attorney-General, unless the authority of the Attorney-General in that behalf has been previously obtained.
- (2) Subject to the provisions of subsection (1) any person may act as a relator in any action in the name of the Attorney-General for any of the purposes mentioned in this Part.
- (3) In any case in which an action is instituted by a person as relator in the name of the Attorney-General, it shall be immaterial –

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- (a) that the relator has no private interest in the subject-matter of the action;
 - (b) what the motive of the relator may be;
 - (c) what may be the *quantum* of public benefit which will or may result from the action.
- (4) Subject to the Rules of Court, any person who has been authorized by the Attorney-General to institute an action as relator in the name of the Attorney-General for any of the purposes mentioned in this Part may be joined as a co-plaintiff with the Attorney-General in any case in which the relator has any cause of action arising out of the act, omission, or matter in respect of which the Attorney-General has authorized the relator to institute the action.
- (5) In any case in which an action is instituted by a public authority or public officer as relator in the name of the Attorney-General, it shall be immaterial –
 - (a) what the motive of the relator may be;
 - (b) what may be the *quantum* of public benefit which will or may result from the action.
- (6) Subject to the Rules of Court, any public authority or public officer which or who has been authorized by the Attorney-General to institute an action as relator in the name of the Attorney-General may be joined as co-plaintiff with the Attorney-General in any case in which

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such public authority or public officer has any cause of action arising out of the act, omission, or matter in respect of which the Attorney-General has authorized such public authority or public officer to institute the action.

- (7) Subject to the Rules of Court, a pending action may, by amendment of the writ of summons or other prescribed process, and the pleadings, and by the authority of the Attorney-General, be converted into an action by a relator in the name of the Attorney-General.
- (8) Every action instituted by a relator in the name of the Attorney-General shall (except as provided by subsection (9)) be deemed to be the Attorney-General's action, and the Attorney-General shall have full power to control the conduct of it.
- (9) For the purposes of the costs of an action instituted by a relator in the name of the Attorney-General the action shall (subject to any order of the Court or a judge) be deemed to be the action of the relator.

62. Proceedings relating to property subject to trust for particular charities

- (1) The Attorney-General need not be a party to, or be cited to see proceedings in, any proceeding in the Court concerning any devise, bequest, trust, gift, or other disposition made or created by any will, deed, or other instrument, or any oral trust, in favour of a particular charity, or concerning the administration of any property subject to a

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trust for a particular charity, or any other proceeding affecting a particular charity, except

—

- (a) in the cases mentioned in subsection (3) of section 56, section 57, and paragraphs (c), (d), (e), and (f) of subsection (1) of section 58;
 - (b) where a scheme is required to be or has been settled for the administration of, or any rules or regulations are required to be or have been made for the internal conduct or management of, the charity; or
 - (c) in cases where the property subject to the trust is devised or bequeathed or otherwise given to, or disposed of in favour of, any particular charity upon any trust or trusts not corresponding to those upon which its general property is held.
- (2) It shall not be necessary in any case to have a scheme settled in respect of any property devised, bequeathed, or otherwise given to, or disposed of in favour of, any particular charity as part of its general property unless the property shall become applicable *cy-pres*.

63. Power of Attorney-General at any time to institute proceedings with respect to any charitable trust

- (1) The Attorney-General may at any time, either *ex officio* or on the relation of any person or public officer, institute any proceedings he may deem

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necessary or proper to establish or enforce the execution of any trust for any charitable purpose, or to recover or protect, or to remedy or prevent any abuse, misapplication, or illegal administration of, any property affected by a trust for any charitable purpose, or to provide for the administration of any such trust.

- (2) The Court or a judge may, in any proceeding in the Court, order or direct that the Attorney-General –
 - (a) be made a party to the proceeding, and for such purpose may make any order for the amendment of the proceeding or otherwise; or
 - (b) be cited to see proceedings in the proceeding.

PART VII – REPRESENTATIVE PROCEEDINGS

Division 1 – Preliminary

64. Interpretation

In this Part –

group member means a member of a group of persons on whose behalf representative proceedings have been commenced;

proceedings means proceedings in the Court, other than criminal proceedings;

representative party means a person who commences representative proceedings;

representative proceedings means proceedings commenced under section 66(1);

sub-group member means a person included in a sub-group established under section 77;

sub-group representative party means a person appointed to be a sub-group representative party under section 77.

65. Application of Part

This Part applies to proceedings commenced after the commencement of this section, whether the cause of action arose before, or arises after, that commencement.

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Division 2 – Commencement of representative proceedings

66. Commencement of representative proceedings

(1) Subject to this Part, if –

- (a) 7 or more persons have claims against the same person; and
- (b) the claims of all those persons are in respect of, or arise out of, the same, similar or related circumstances; and
- (c) the claims of all those persons give rise to a substantial common question of law or fact –

proceedings may be commenced by one or more of those persons as representing some or all of them.

(2) Representative proceedings may be commenced –

- (a) whether or not the relief sought –
 - (i) is, or includes, equitable relief; or
 - (ii) consists of, or includes, damages; or
 - (iii) includes claims for damages that would require individual assessment; or
 - (iv) is the same for each person represented; and

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- (b) whether or not the proceedings –
 - (i) are concerned with separate contracts or transactions between the defendant in the proceedings and individual group members; or
 - (ii) involve separate acts or omissions of the defendant done or omitted to be done in relation to individual group members.

67. Standing

- (1) For the purposes of section 66(1)(a), a person has a sufficient interest to commence representative proceedings against another person on behalf of other persons if the person has standing to commence proceedings on the person's own behalf against that other person.
- (2) The person may commence representative proceedings on behalf of other persons against more than one defendant, whether or not the person and each of those persons have a claim against every defendant in the proceedings.
- (3) If a person has commenced representative proceedings, that person retains standing –
 - (a) to continue the proceedings; and
 - (b) to bring an appeal from a judgment in the proceedings –

even though the person ceases to have a claim against any defendant.

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68. Consent to be a group member not required

- (1) Subject to subsection (2), the consent of a person to be a group member is not required.
- (2) None of the following is a group member in representative proceedings unless the person gives consent in writing to being so:
 - (a) the Commonwealth, a State or a Territory;
 - (b) a Minister of the Commonwealth, a State or a Territory;
 - (c) a body corporate established for a public purpose by a law of the Commonwealth, a State or a Territory, other than an incorporated company or incorporated association;
 - (d) an officer of the Commonwealth, a State or a Territory, in his or her capacity as an officer.

69. Persons under legal incapacity

- (1) In this section –

substitute decision-maker means a person who has a legal right or legal obligation to make decisions for another person.
- (2) It is not necessary for a person under legal incapacity to have a substitute decision-maker merely in order to be a group member.

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- (3) A group member who is a person under legal incapacity may only take a step in representative proceedings, or conduct part of the proceedings, by means of the member's substitute decision-maker.

70. Originating process

- (1) The originating process in representative proceedings, or a document filed in support of the originating process, must –
- (a) describe or otherwise identify the group members to whom the proceedings relate; and
 - (b) specify the nature of the claims made on behalf of the group members and the relief claimed; and
 - (c) specify the question of law or facts common to the claims of the group members; and
 - (d) include any other matters required by the Rules of Court to be included.
- (2) In describing or otherwise identifying group members for the purposes of subsection (1), it is not necessary to name, or specify the number of, group members.

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71. Right of group member to opt out

- (1) The Court is to fix a date before which a group member may opt out of representative proceedings in the Court.
- (2) A group member may opt out of the representative proceedings by written notice given before the date so fixed.
- (3) The Court may, on application by a group member, the representative party or the defendant in the proceedings, fix another date so as to extend the period during which a group member may opt out of the representative proceedings.
- (4) Except with the leave of the Court, the hearing of representative proceedings must not commence earlier than the date before which a group member may opt out of the proceedings.

72. Causes of action accruing after commencement of representative proceedings

- (1) On application by the representative party made at any stage of representative proceedings, the Court may give leave to amend the originating process that commenced the representative proceedings so as to alter the description of the group.
- (2) The description of the group may be altered so as to include a person –

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- (a) whose cause of action accrued after the commencement of the representative proceedings but before such date as the Court fixes when giving leave under subsection (1); and
 - (b) who would have been included in the group, or with the consent of the person would have been included in the group, if the cause of action had accrued before the commencement of the proceedings.
- (3) The date fixed under subsection (2)(a) may be the date on which leave is given or another date.
- (4) If the Court gives leave under subsection (1), it may also make any other orders it thinks just, including an order relating to the giving of notice to persons who, as a result of the amendment, will be included in the group and the date before which such persons may opt out of the proceedings.

73. Situation where fewer than 7 group members

If, at any stage of representative proceedings, it appears likely to the Court that there are fewer than 7 group members, the Court, on such conditions (if any) as it thinks fit, may order that the proceedings continue under this Part or order that the proceedings no longer continue under this Part.

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74. Distribution costs excessive

If –

- (a) the relief claimed in representative proceedings is or includes payment of money to group members (otherwise than in respect of costs); and
- (b) on application by the defendant, the Court concludes that it is likely that, if judgment were to be given in favour of the representative party, the cost to the defendant of identifying the group members and distributing to them the amounts ordered to be paid to them would be excessive having regard to the likely total of those amounts –

the Court, by order, may direct that the proceedings no longer continue under this Part or stay the proceedings so far as they relate to relief of the kind referred to in paragraph (a).

75. Court may order discontinuance of proceedings in certain circumstances

- (1) The Court, on application by the defendant or of its own motion, may order that representative proceedings no longer continue under this Part if it is satisfied that it is in the interests of justice to do so because –
 - (a) the costs that would be incurred, should the proceedings continue as representative proceedings, are likely to

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- exceed the costs that would be incurred if each group member conducted a separate proceeding; or
- (b) all the relief sought can be obtained by means of proceedings other than representative proceedings under this Part; or
 - (c) the representative proceedings will not provide an efficient and effective means of dealing with the claims of group members; or
 - (d) a representative party is not able to adequately represent the interests of the group members; or
 - (e) it is otherwise inappropriate that the claims be pursued by means of representative proceedings.
- (2) For the purposes of subsection (1)(e), it is not inappropriate for claims to be pursued by means of representative proceedings merely because the persons identified as group members in relation to the proceedings –
- (a) do not include all persons on whose behalf those proceedings might have been brought; or
 - (b) are aggregated together for a particular purpose such as a litigation funding arrangement.

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- (3) If the Court dismisses an application under this section, the Court may order that no further application under this section be made by the defendant except with the leave of the Court.
- (4) Leave for the purposes of subsection (3) may be granted subject to such conditions as to costs as the Court considers just.

76. Effect of discontinuance order under this Part

- (1) If the Court makes an order under section 73, 74 or 75 that representative proceedings no longer continue under this Part –
 - (a) the proceedings may be continued as proceedings by the representative party on the party's own behalf against the defendant; and
 - (b) on the application of a person who was a group member for the purposes of the representative proceedings, the Court may order that the person be joined as an applicant in the proceedings.
- (2) In this section –
 - applicant*, in relation to proceedings, includes a claimant or plaintiff in the proceedings.

77. Determination of questions if not all common

- (1) If it appears to the Court that determination of the question or questions common to all group members will not finally determine the claims of

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all group members, the Court may give directions in relation to the determination of the remaining questions.

- (2) In the case of questions common to the claims of some only of the group members, the directions given by the Court may include directions establishing a sub-group consisting of those group members and appointing a person to be the sub-group representative party on behalf of the sub-group members.

78. Individual questions

- (1) In giving directions under section 77, the Court may permit an individual group member to appear in the proceedings for the purpose of determining a question that relates only to the claims of that member.
- (2) In such a case, the individual group member, and not the representative party, is liable for costs associated with the determination of the question.

79. Directions relating to commencement of further proceedings

If a question cannot be dealt with properly or conveniently by the Court under section 77 or 78, the Court may give directions for the commencement and conduct of other proceedings, whether or not representative proceedings.

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80. Adequacy of representation

- (1) If, on application by a group member, it appears to the Court that a representative party is not able to represent the interests of the group members adequately, the Court may substitute another group member as representative party and make such other orders as it thinks fit.
- (2) If, on application by a sub-group member, it appears to the Court that a sub-group representative party is not able to represent the interests of the sub-group members adequately, the Court may substitute another person as sub-group representative party and may make such other orders as it thinks fit.

81. Stay of execution in certain circumstances

If a defendant in representative proceedings commences proceedings in the Court against a group member, the Court may order a stay of execution in respect of any relief awarded to the group member in the representative proceedings until the other proceedings are determined.

82. Approval of Court required for settlement or discontinuance

- (1) Representative proceedings may not be settled or discontinued without the approval of the Court.
- (2) If the Court gives such approval, it may make such orders as are just with respect to the distribution of any money, including interest,

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paid under a settlement or paid into the Court in relation to the representative proceedings.

- (3) Unless the Court is satisfied that it is just to do so, an application for approval of a settlement of representative proceedings may not be determined unless notice has been given to group members in accordance with section 84.

83. Settlement of individual claim of representative party

- (1) A representative party, with the leave of the Court, may settle the party's individual claim in whole or in part at any stage of the representative proceedings.
- (2) If in representative proceedings the representative party is seeking leave of the Court to settle, or has settled, his or her individual claim, the representative party, with the leave of the Court, may withdraw as representative party.
- (3) If a person has sought leave to withdraw as representative party under subsection (2), the Court, on application by a group member, may make an order for the substitution of another group member as representative party and may make such other orders as it thinks fit.
- (4) Before granting, under subsection (2), a person leave to withdraw as representative party –
- (a) the Court must be satisfied that notice of the application has been given to group members in accordance with

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section 84(1) and has been given in sufficient time for them to apply to have another person substituted as the representative party; and

- (b) any application for the substitution of another group member as representative party must have been determined.

Division 3 – Notices

84. Notice to be given of certain matters

- (1) Notice must be given to group members of the following matters in relation to representative proceedings:
 - (a) the commencement of the proceedings and the right of the group members to opt out of the proceedings before a specified date, being the date fixed under section 71(1);
 - (b) an application by the defendant in the proceedings for the dismissal of the proceedings on the ground of want of prosecution;
 - (c) an application for approval of a settlement;
 - (d) an application by a representative party seeking leave to withdraw under section 83 as representative party.
- (2) The Court may dispense with compliance with any or all of the requirements of subsection (1) if

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the relief sought in the representative proceedings does not include any claim for damages.

- (3) If the Court so orders, notice must be given to group members of the paying into Court of money in answer to a cause of action on which a claim in the representative proceedings is founded.
- (4) The Court, at any stage, may order that notice of any matter be given to a group member or group members.
- (5) Notice under this section must be given as soon as practicable after the occurrence of the event to which it relates.

85. Notices under section 84

- (1) The form and content of a notice under section 84 are to be approved by the Court.
- (2) The Court, by order, is to specify –
 - (a) who is to give the notice; and
 - (b) the way in which the notice is to be given.
- (3) An order under subsection (2) may also include provisions –
 - (a) directing a party to provide information relevant to the giving of the notice; and
 - (b) relating to the costs of giving the notice.

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- (4) An order under subsection (2) may require that notice be given by –
 - (a) means of press advertisement, radio broadcast or television broadcast; or
 - (b) any other means.
- (5) The Court may not order that notice be given personally to each group member unless it is satisfied that it is reasonably practicable, and not unduly expensive, to do so.
- (6) A notice that concerns a matter for which the Court’s leave or approval is required must specify the period within which a group member or other person may apply to the Court, or take some other step, in relation to the matter.
- (7) A notice that includes or concerns conditions must specify the conditions and the period, if any, for compliance.
- (8) The failure of a group member to receive, or respond to, a notice does not affect a step taken, or an order made or judgment given, in any proceedings.

Division 4 – Powers of Court

86. Judgment – powers of Court

- (1) The Court, in determining a matter in representative proceedings, may do any one or more of the following:
 - (a) determine a question of law;

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- (b) determine a question of fact;
 - (c) make a declaration of liability;
 - (d) grant any equitable relief;
 - (e) make an award of damages for group members, sub-group members or individual group members, being damages consisting of specified amounts or amounts calculated in such manner as the Court specifies;
 - (f) make an award of damages in an aggregate amount without specifying amounts awarded in respect of individual group members.
- (2) In making an award of damages, the Court must make provision for the payment or distribution of the money to the group members entitled.
- (3) Subject to section 82, the Court is not to make an award of damages under subsection (1)(f) unless a reasonably accurate assessment can be made of the total amount to which group members will be entitled under the judgment.
- (4) If the Court has made an award of damages, the Court may give such directions (if any) as it thinks just in relation to –
- (a) the manner in which a group member is to establish the member's entitlement to share in the damages; and

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- (b) the manner in which any dispute regarding the entitlement of a group member to share in the damages is to be determined.
- (5) A judgment given in representative proceedings is to describe or otherwise identify the group members who will be affected by it.

87. Constitution, &c., of fund

- (1) Without limiting the operation of section 86, in making provision for the distribution of money to group members, the Court may provide for –
- (a) the constitution and administration of a fund consisting of the money to be distributed; and
 - (b) either –
 - (i) the payment by the defendant of a fixed sum of money into the fund; or
 - (ii) the payment by the defendant into the fund of such instalments, and on such terms, as the Court directs so as to meet the claims of group members; and
 - (c) entitlements to interest earned on the money in the fund.
- (2) The costs of administering a fund are to be borne by the fund, or by the defendant in the

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representative proceedings, or by both, as the Court directs.

- (3) If the Court orders the constitution of a fund referred to in subsection (1), the order is to –
- (a) require notice to be given to group members in such manner as is specified in the order; and
 - (b) specify the manner in which a group member is to make a claim for payment out of the fund and establish the group member’s entitlement to payment; and
 - (c) specify a day (which is not earlier than 6 months after the day on which the order is made) on or before which the group members are to make a claim for payment out of the fund; and
 - (d) make provision in relation to the day by which the fund is to be distributed to group members who have established an entitlement to be paid out of the fund.
- (4) The Court may allow a group member to make a claim after the day specified under subsection (3)(c) if –
- (a) the fund has not already been fully distributed or applied in accordance with an order under subsection (5); and
 - (b) it is just to do so.

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- (5) On the application of the defendant made after the day by which the fund is to be distributed to group members, as referred to in subsection (3)(d), the Court may make such orders as it thinks fit for the payment from the fund to the defendant of the money remaining in the fund.

88. Effect of judgment

A judgment given in representative proceedings binds all group members affected by it, other than any person who has opted out of the proceedings under section 71.

Division 5 – Appeals

89. Appeals

- (1) Subject to the Rules of Court and without limiting the application of section 40, the following appeals from a judgment of the Court in representative proceedings may be brought under that section as representative proceedings:
- (a) an appeal by the representative party on behalf of group members in respect of a judgment to the extent that it relates to questions common to the claims of the group members;
 - (b) an appeal by a sub-group representative party on behalf of sub-group members in respect of a judgment to the extent that it

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relates to questions common to the claims of the sub-group members.

- (2) The parties to an appeal in respect of the determination of a question that relates only to the claim of an individual group member are that group member and the defendant.
- (3) If the representative party or the sub-group representative party does not institute an appeal within the time allowed for doing so, another member of the group or sub-group may, within a further 21-day period, institute an appeal as representing the group members or sub-group members.
- (4) If an appeal is brought from the judgment of the Court in representative proceedings, the Court hearing the appeal may direct that notice of the appeal be given to such persons, and in such manner, as it considers appropriate.
- (5) This Part, other than section 71, applies to appeal proceedings that relate to representative proceedings despite any other provisions of this Act, the provision of any other Act or any other law.
- (6) The notice instituting an appeal in relation to questions that are common to the claims of group members or sub-group members must describe or otherwise identify the group members or sub-group members but need not specify the names or number of those members.

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Part VII – Representative Proceedings

Division 6 – Miscellaneous

89A. Costs

In any representative proceedings, the Court may not award costs against a person on whose behalf the proceedings have been commenced (other than a representative party) except as authorised by section 77 or 78.

89B. Suspension of limitation periods

- (1) On the commencement of any representative proceedings, the running of the limitation period that applies to the claim of a group member to which the proceedings relate is suspended.
- (2) The limitation period does not begin to run again unless –
 - (a) the member opts out of the proceedings under section 71; or
 - (b) the proceedings are discontinued; or
 - (c) the proceedings, and any appeals arising from the proceedings, are determined without finally disposing of the group member's claim.
- (3) However, nothing in this section affects the running of a limitation period in respect of a group member who, immediately before the commencement of the representative proceedings, was barred by the expiration of that period from commencing proceedings in the

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member's own right in respect of a claim in the representative proceedings.

- (4) This section applies despite anything in the *Limitation Act 1974* or any other law.

89C. General power of Court to make orders

In any proceedings, including an appeal, conducted under this Part, the Court, of its own motion or on application by a party or a group member, may make any order that the Court thinks appropriate or necessary to ensure that justice is done in the proceedings.

89D. Reimbursement of representative party's costs

- (1) If the Court has made an award of damages in representative proceedings, the representative party or a sub-group representative party, or a person who has been such a party, may apply to the Court for an order under this section.
- (2) If, on an application under subsection (1), the Court is satisfied that the costs reasonably incurred in relation to the representative proceedings by the applicant are likely to exceed the costs recoverable by the applicant from the defendant, the Court may order that an amount equal to the whole or a part of the excess be paid to the applicant out of the damages awarded.
- (3) On an application under subsection (1), the Court may also make any other order that it thinks just.

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Part VIII – Proceedings in Lunacy

PART VIII – PROCEEDINGS IN LUNACY

90. No commission in nature of a writ of *de lunatico inquirendo* to be issued

No commission in the nature of a writ *de lunatico inquirendo* shall be issued after the commencement of this Act.

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Part IX – Enforcement of Judgments and Execution

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**PART IX – ENFORCEMENT OF JUDGMENTS AND
EXECUTION**

162. Interpretation

In this Part –

Government stock, Government funds, and Government annuities include any Government stock (including inscribed stock), funds, annuities, or other Government securities whatsoever;

public company means any company, whether such company is incorporated or was created or established in this State or elsewhere and includes a proprietary or a private company;

securities of a public authority includes any stock, funds, or other securities of a public authority.

163. Powers of Court as to enforcement of its judgments

The Court and every judge thereof shall have the same powers and authorities for the purpose of enforcing and giving effect to the judgments and orders of the Court or a judge as was possessed by the Court in any part of the jurisdiction of the Court which is subject to this Act immediately before the commencement of this Act, and also all such further powers and authorities as are conferred upon the Court or a judge by this Act or the Rules of Court.

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Part IX – Enforcement of Judgments and Execution

164. Judgment for sum of money to have same effect as judgment at Common Law

- (1) All judgments and orders of the Court or any judge thereof, whether sitting in court or in chambers, whereby any sum of money, including any costs, charges, or expenses, shall be recovered by or shall be payable to any person shall have the same effect, and may be enforced by the same writs and process, as a judgment in an action at Common Law had, and could be enforced by, immediately before the commencement of this Act; and any person to whom any such sum of money, costs, charges, or expenses shall be payable shall be deemed to be a judgment creditor to all intents and for all purposes, and every person by whom such sum of money, costs, charges, or expenses shall be payable shall be deemed to be a judgment debtor.
- (2) Any such judgment or order may also be enforced by any other writs, process, or means provided by this Act or the Rules of Court for the enforcement of any such judgment or order.
- (3) Subject to the provisions of this Act and the Rules of Court, all judgments and orders of the Court or any judge thereof whether sitting in Court or in chambers –
 - (a) whereby any sum of money (including any sum of money payable as costs, charges, or expenses) is directed to be paid into Court or to any person within a limited time;

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- (b) whereby any act other than the payment of money is directed to be done or performed;
- (c) whereby any person is expressly directed or impliedly required to abstain from doing any act;
- (d) for the recovery of any land; or
- (e) for the recovery of any property other than money or land –

may be enforced by the same writs and process as such a judgment of the Court could be enforced by, in any part of the jurisdiction of the Court which is subject to this Act, immediately before the commencement of this Act, and also by any other writs, process, or means provided by this Act or the Rules of Court for the enforcement of such judgments and orders respectively.

- (4) Any judgment or order of a judge whether sitting in court or in chambers may be enforced by the same writs, process, and means as it could be enforced by if it were a judgment of a Full Court.
- (5) Subject to the provisions of this Act and the Rules of Court, the Court or a judge may, in any case in which it is just or convenient so to do, grant such equitable relief in aid of or in substitution for execution on or under any judgment or order of the Court or a judge as the circumstances of the case may require.

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Part IX – Enforcement of Judgments and Execution

165. Judgments to carry interest

Every such judgment and order as is mentioned in section 164(1) shall carry interest at the rate of 5 per centum per annum, or such other rate as may be prescribed by the Rules of Court, from the time of the trial or inquiry, or, if there has been no trial or inquiry, from the time of signing or entering up judgment; and the amount of such interest shall be stated in the body of, and may be levied under, a writ of execution on such judgment.

166. Charging order on Government stock or shares in companies belonging to judgment debtor

If any person against whom any such judgment or order as is mentioned in section 164(1) shall have been entered up in the Court, or made by the Court, or any judge thereof, shall have any Government stock, funds, or annuities, or securities of a public authority, or stock or shares of or in any public company in this State (whether incorporated or not), standing in his name, in his own right, or in the name of any person in trust for him, it shall be lawful for a judge, on the application of any judgment creditor, to order that such stocks, funds, annuities, securities, or shares, or such of them, or such part thereof respectively, as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered or the amount ordered to be paid and interest thereon; and such order shall entitle the judgment creditor to all such remedies as he

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would have been entitled to if such charge had been made in his favour by the judgment debtor: Provided that no proceedings shall be taken to have the benefit of such charge until the expiration of 6 months from the date of such order.

167. Charging order to be made *ex parte* in first instance, and on notice to bank or company to act as a *distringas*

In order to prevent any person against whom judgment shall have been obtained, or an order shall have been made, from transferring, receiving, or disposing of any stock, funds, annuities, securities, or shares hereby authorized to be charged for the benefit of the judgment creditor under the order of a judge, every order of a judge charging any Government stock, funds, or annuities, or any securities of a public authority, or any stock or shares in any public company, under this Act, shall be made in the first instance *ex parte*, without any notice to the judgment debtor, and shall be an order to show cause only; and such order (if any Government stock, funds, or annuities, or any securities of a public authority standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by such order) shall restrain the officer or person having the registry, control, or management of such stock, funds, annuities, or securities, or of the transfers thereof, from permitting a transfer of such stock, funds, annuities, or securities in the meantime and until

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such order shall be made absolute or discharged; and (if any stock or shares of or in any public company in this State standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by such order) shall in like manner restrain such public company from permitting a transfer thereof; and if after notice of such order to the person or persons to be restrained thereby, or, in case of any corporation, to any authorized agent of such corporation, and before the same shall be discharged or made absolute, such corporation or person or persons shall permit any such transfer to be made, then and in such case the corporation or person or persons so permitting such transfer shall be liable to the judgment creditor for the value or amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment or the sum ordered to be paid to him; and no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and further, unless the judgment debtor shall, within a time to be mentioned in such order, show to a judge sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney, or agent, be made absolute: Provided that any such judge shall, upon the application of the judgment debtor or any person interested, have full power to discharge or vary such order.

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168. Provisions of sections 166 and 167 to extend to contingent interest in stock and shares and the dividends thereof, and to stock, &c., in Court

The provisions contained in sections 166 and 167 shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent as well in any such stock, funds, annuities, securities, or shares as aforesaid, as also in the dividends, interest, or annual produce of any such stock, funds, annuities, securities, or shares; and whenever any such judgment debtor shall have any estate, right, title, or interest vested or contingent in possession, remainder, or reversion in, to, or out of any such stock, funds, annuities, securities, or shares as aforesaid which now are, or shall hereafter be, standing in the name of any officer of the Court, or in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for a judge to make any order as to such stock, funds, annuities, securities, or shares, or the interest dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor: Provided always that no order of any judge as to any stock, funds, annuities, securities, or shares standing in the name of any such officer as aforesaid, or as to the interest, dividends, or annual produce thereof, shall prevent any banker or public company from permitting any transfer of such stock, funds, annuities, securities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the

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Court or a judge may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, securities, or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor with the amount of the sum to be mentioned in any such order.

169. Execution of instruments by order of Court

Where any person refuses or neglects to comply with any judgment or order of the Court or a judge directing him to execute any conveyance, lease, memorandum of transfer, memorandum of lease, contract, or other assurance, document, or instrument whatsoever or to endorse any negotiable instrument, the Court or any judge thereof may, on such terms and conditions, if any, as may be just, order that such conveyance, lease, memorandum of transfer, memorandum of lease, contract or other assurance, document, or instrument, or negotiable instrument, shall be executed or endorsed by such person as the Court or judge may nominate for that purpose; and in such case the conveyance, lease, memorandum of transfer, memorandum of lease, contract, or other assurance, document, or instrument, or negotiable instrument so executed or endorsed by such person shall operate, and be for all purposes available, as if it had been executed or endorsed by the person originally directed to execute or endorse it.

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**PART X – ENFORCEMENT IN TASMANIA OF
JUDGMENTS OBTAINED IN SUPERIOR COURTS IN
OTHER PARTS OF HIS MAJESTY’S DOMINIONS**

170. Interpretation

In this Part, unless the contrary intention appears

—

a judge means a judge of the Supreme Court of Tasmania sitting in Court or in chambers;

judgment means any judgment or order given or made by a court in any civil proceedings, whether before or after the commencement of this Act, whereby any sum of money is payable; and includes an award in proceedings on an arbitration, if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;

judgment creditor means the person by whom the judgment was obtained, and includes the successors and assigns of that person;

judgment debtor means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given;

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172. Cases in which the judgments mentioned in section 171 are not to be registered in the Court

No judgment shall be ordered to be registered under this Part if –

- (a) the original court acted without jurisdiction;
- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear, or otherwise submit or agree to submit to the jurisdiction of that Court;
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court, and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court, or agreed to submit to the jurisdiction of that court;
- (d) the judgment was obtained by fraud;
- (e) the judgment debtor satisfies a judge either that an appeal is pending, or that he is entitled and intends to appeal against the judgment; or
- (f) the judgment was in respect of a cause of action which for reasons of public policy, or for some other similar reason, could

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174. Rules of Court

- (1) Provision may be made by Rules of Court for regulating the procedure and practice (including scales of fees and evidence) in respect of proceedings of any kind under this Part.
- (2) The Rules of Court under this Part shall provide –
 - (a) for service on the judgment debtor of notice of the registration of a judgment under this Part;
 - (b) for enabling the Court or a judge thereof, on an application by the judgment debtor, to set aside the registration of a judgment under this Part, on such terms as the Court or judge thinks fit; and
 - (c) for suspending the execution of a judgment registered under this Part until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

175. Costs of action on a judgment which might have been registered under this Part, but has not been so registered

In any action brought in the Supreme Court on any judgment which might be ordered to be registered under this Part, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment

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territory which is under His Majesty’s protection, or in respect of which a mandate is being exercised by the Government of any part of His Majesty’s dominions other than the Commonwealth, as if that territory were part of His Majesty’s dominions; and on the making of any such order-in-council this Part, subject to the provisions of the order-in-council, shall extend and apply to that part accordingly.

- (4) An order-in-council made under this section may be varied or revoked by a subsequent order.

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PART XI – JURISDICTION OF INFERIOR COURTS

178. Power of Governor to confer jurisdiction in equity on any inferior court of civil jurisdiction

It shall be lawful for the Governor, by order-in-council, to confer on any inferior court of civil jurisdiction any part of the jurisdiction in equity which is now vested in the Supreme Court.

179. Jurisdiction conferred under section 178 may be limited or conferred subject to conditions

The jurisdiction so conferred may be limited, either as to subject-matter or the nature of the remedy, redress, or relief which may be granted, or as to the amount or value of any claim, demand, or property which may be the subject-matter of the jurisdiction, or in all such respects, or in any other respect, and such jurisdiction may be conferred subject to any conditions.

180. Power of Governor to extend any of the provisions of this Act to any inferior court of civil jurisdiction

It shall be lawful for the Governor, by order-in-council, to extend any of the provisions of this Act, or of the Rules of Court under this Act, to any inferior court of civil jurisdiction.

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181. Transfer to Court of proceedings in equity where subject-matter exceeds limit of jurisdiction of inferior court

- (1) If, during the progress of any action or matter pending before an inferior court of civil jurisdiction which has jurisdiction in equity conferred on it within the meaning of this Part, it shall be made to appear to the judge of such court that the subject-matter exceeds the limit in point of amount to which the jurisdiction of such court in equity is limited, it shall not affect the validity of any order already made, but it shall be the duty of such judge to direct the action or matter to be transferred to the Supreme Court, and the whole of the procedure in the said action or matter, when so transferred, shall be regulated by the Rules of Court under this Act: Provided always that it shall be lawful for any party to apply to a judge of the Supreme Court for an order authorizing and directing the action or matter to be carried on and prosecuted in the inferior court notwithstanding such excess, and the judge, if he shall deem it right to summon the other parties or any of them to appear before him for that purpose, after hearing such parties, or in default of the appearance of all or any of them, shall have full power to make such order.
- (2) The Court or a judge may (if the cause or matter is one which can be proceeded with in a district registry) by the order directing any such transfer, or at any time after the transfer, direct the cause or matter to be proceeded with in any district registry in which the cause or matter can be proceeded with.

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182. Inferior court having jurisdiction at law and in equity may grant same relief, and give effect to same defences and counter-claims, as the Court

- (1) Subject to the provisions of this Act and of any such order-in-council as aforesaid, every inferior court which may after the passing of this Act have jurisdiction at law and in equity shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant, in any proceeding before such court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such action give such and the like effect to every ground of defence or counter-claim, equitable or legal, in as full and ample a manner as might and ought to be done in the like case in the Supreme Court.
- (2) The jurisdiction of Courts of Requests and of Courts of General Sessions as existing at the commencement of this Act shall not be deemed to include jurisdiction in equity within the meaning of this section or section 183.

183. Counter-claims in inferior courts, and transfers therefrom

- (1) Where in any proceeding before any inferior court of civil jurisdiction having jurisdiction at law and in equity within the meaning of this Part any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the inferior court, such defence or counter-claim shall not affect the competence or the duty of the

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inferior court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the inferior court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always that in such case it shall be lawful for a judge of the Supreme Court, if he shall think fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior court to the Supreme Court, and (if the proceeding is one which can be proceeded with in a district registry) the judge may order it to be proceeded with in any district registry in which it can be proceeded with, and in any such case the record in such proceeding shall be transmitted by the Registrar or other proper officer of the inferior court to the Registrar of the Supreme Court, or (if the judge orders the proceeding to be proceeded with in a district registry) to the district registrar at the registry in which the proceeding is to be proceeded with, and the same shall thenceforth be continued and prosecuted in the Supreme Court as if it had been originally commenced therein.

- (2) The jurisdiction of any such inferior court in cases of counter-claim shall not be excluded by reason –
 - (a) that the counter-claim involves matter not within the local jurisdiction of such inferior court, but within the jurisdiction of any other inferior court of civil jurisdiction of this State;

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- (b) that, where the counter-claim involves more than one cause of action, as to each of which the defendant might have maintained a separate action, each such cause of action being within the jurisdiction of the inferior court, the aggregate amount of the counter-claim exceeds the jurisdiction of the inferior court; or
 - (c) that the counter-claim is for an amount of money exceeding the jurisdiction of the inferior court; provided that the plaintiff does not object in writing (within such time as may be prescribed by Rules of Court) to the inferior court giving relief exceeding that which such court would have had jurisdiction to administer irrespective of the provisions of this section.
- (3) In any case where the counter-claim in any action in any such inferior court involves matter which, notwithstanding the provisions of subsections (1) and (2), is beyond the jurisdiction of such court, the inferior court may, on such terms, if any, as it may think just, either adjourn the hearing of the case or stay execution on the judgment for such time as may be necessary to enable any party to apply to remove the proceedings into the Supreme Court, or to enable the defendant to prosecute in a court of competent jurisdiction an action for the purpose of establishing his counter-claim; and in default of any such application being made, or action brought, the inferior court shall, after the

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expiration of the time limited, have jurisdiction to hear and determine the whole matter in controversy to the same extent as if the whole matter were within the absolute competence of the inferior court.

184. Procedure on transfer of causes from the Court to inferior court of civil jurisdiction

- (1) Where, pursuant to the provisions of this Act, any cause (including a counter-claim), matter, or proceeding is ordered to be transferred from the Supreme Court to an inferior court of civil jurisdiction, any party may lodge, or cause to be lodged, with the registrar of the inferior court named in the order, the order and the writ or statement of claim, or copies thereof, and such other documents, if any, as a judge of the Supreme Court may direct; and the Registrar of the Supreme Court or the district registrar at the registry in which the cause, matter, or proceeding is proceeding shall, on the application of such party, and on production of the order and on the filing of a copy thereof, send to the registrar of the inferior court all pleadings, affidavits, and other documents filed in the Supreme Court relating to the cause, matter, or proceeding. On the documents aforesaid being so lodged or sent, the cause, matter, or proceeding shall be transferred to the said inferior court, and, subject to the provisions of this section and to any rules of such court, all further proceedings therein shall be taken and tried as if the inferior court had had jurisdiction to entertain the cause, matter, or proceeding,

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when it was commenced, and the cause, matter, or proceeding had been originally commenced therein, and the inferior court shall have jurisdiction to deal with the cause, matter, or proceeding, any enactment to the contrary notwithstanding: Provided that the transfer shall not affect any right of appeal to the Supreme Court from the order directing the transfer, or the right of the Supreme Court or any judge thereof to enforce in that Court any judgment signed, or order made, in that Court before the transfer.

- (2) Any judge of the Supreme Court may, if circumstances render it necessary or desirable so to do, order any cause (including a counter-claim), matter, or proceeding which has been transferred to an inferior court of civil jurisdiction to be retransferred to the Supreme Court, and (if the proceeding is one which can be proceeded with in any district registry) the judge may order it to be proceeded with in any district registry in which it can be proceeded with, and any party may lodge, or cause to be lodged with the Registrar of the Supreme Court or (if the judge orders the proceeding to be proceeded with in a district registry) with the district registrar at the registry in which the proceeding is to be proceeded with, the order and the writ or statement of claim, or copies thereof, and such other documents, if any, as the judge may direct; and the registrar of the inferior court shall, on the application of such party, and on production of the order and on the filing of a copy thereof, send to the Registrar of the Supreme Court or the district registrar at the registry in which the

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proceeding is to be proceeded with all pleadings, affidavits, and other documents filed in the inferior court relating to the cause, matter, or proceeding.

- (3) The judge of the Supreme Court ordering the transfer of any cause (including a counter-claim), matter, or proceeding from the Supreme Court to an inferior court of civil jurisdiction, or from an inferior court of civil jurisdiction to the Supreme Court, may, by the order, direct that any pleadings delivered or filed or any other proceedings had or taken in the Supreme Court or in the inferior court of civil jurisdiction, as the case may be, shall or may be used or availed of in the court to which the cause, matter, or proceeding is transferred as if the same had been delivered, filed, had, or taken therein, and may give such further or other directions with respect to the transfer or the trial or hearing of the cause, matter, or proceeding as may appear to him to be necessary or convenient.
- (4) Where, pursuant to the provisions of this Act, or the Rules of Court an order is made directing any question or issue to be tried in an inferior court of civil jurisdiction, or by a judge of an inferior court of civil jurisdiction, the order shall define the question or issue to be tried, and any party may lodge, or cause to be lodged, the order, together with the affidavits, if any, filed in the matter and such other documents, if any, as the Court or judge may direct, with the registrar of the inferior court named in the order; and on the documents aforesaid being so lodged the issue shall, subject to any rules of the inferior

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court, be tried in the inferior court, any enactment to the contrary notwithstanding, and the judge of that court, after the same has been tried, shall certify the result of the trial, and send his certificate to the Supreme Court, together with the documents aforesaid and any report which he may think fit to make as to costs or any other matter.

(5) –

- (a) Where, under any of the provisions of this Act, any cause (including a counter-claim), matter, or proceeding, is transferred from the Supreme Court to an inferior court of civil jurisdiction, or from an inferior court of civil jurisdiction to the Supreme Court, the costs of the whole proceedings, both before and after the transfer, shall, subject to any order made by the court which ordered the transfer, be in the discretion of the court to which the cause, matter or proceeding is transferred, and that court shall have power to make orders with respect thereto, and as to the scales on or under which the costs of the several parts of the proceedings are to be taxed, and the costs of the whole proceedings shall be taxed in that court;
- (b) Provided that, as regards so much of the proceedings in an action transferred from the Supreme Court to an inferior court of civil jurisdiction as shall take place in the Supreme Court before the transfer, the

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costs thereof shall be subject to the provisions of section 13, and the powers of the Court or a judge under that section to make an order allowing costs on any Supreme Court scale or on or under any scale of costs in any inferior court of civil jurisdiction, shall, subject to any order of the Court or judge by whom the transfer was ordered, be exercisable by the judge of the inferior court of civil jurisdiction.

185. Provisions of section 11 to apply to all courts in which they can be applied

The provisions of section 11 shall be applied and receive effect in all courts whatsoever in this State, so far as the matters to which such provisions relate shall be respectively cognizable by such courts.

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Part XII – Officers and Offices

PART XII – OFFICERS AND OFFICES

186. Establishment of district registries

- (1) The Governor, on the recommendation of the judges of the Supreme Court, or a majority of them (of whom the Chief Justice shall be one), may, by order-in-council, establish district registries at such places as shall be in such order mentioned for districts to be thereby defined, from or in which writs of summons, statements of claim, and any other process prescribed for the commencement of actions in the Supreme Court, and informations, writs, summonses, petitions, citations, and any other process whatsoever, may be issued or filed, and in which such proceedings may be taken and recorded as are in this Part mentioned, and the Governor may thereby appoint that any officer of the Court or registrar of the Magistrates Court (Civil Division) or of any other inferior court, or any other person, shall be a district registrar of the Supreme Court for such district for the purpose of issuing or filing any such process as aforesaid and having such proceedings taken before him as are in this Part mentioned.
- (2) The Governor may at any time rescind and revoke any such order-in-council establishing a district registry.
- (3) The Governor may, by any such order-in-council, establish any such district registry for particular purposes only, or may thereby direct that certain proceedings only may be taken and

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recorded therein, and such proceedings may or may not include the issue or filing of writs of summons, statements of claim, or any other process prescribed for the commencement of actions or any other process.

- (4) While there is any district registry the registry of the Court at Hobart shall be known as the Principal Registry, and the Registrar of the Supreme Court shall be the registrar thereat.

187. Seal of district registry

- (1) In every such district registry there shall be kept and used as occasion requires such seal as the Chief Justice shall direct.
- (2) Such seal shall be kept in such custody as the Chief Justice shall direct.
- (3) Such seal shall be impressed on every writ and other document issued out of, or filed in, such district registry, and all exemplifications and copies of any such document purporting to be sealed with the seal of any such district registry shall be received in evidence without further proof thereof.
- (4) Every district registrar shall have power to administer oaths, and shall perform such duties in respect of any proceedings pending in the Supreme Court as may be assigned to him by or pursuant to the Rules of Court or by any special order of the Court. Every district registrar shall be deemed to be an officer of the Court, and be

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subject accordingly to the jurisdiction of the Court.

188. Original proceedings may be instituted in any registry

- (1) Subject to this Act and the Rules of Court, and the provisions of any such order-in-council, original proceedings in the Supreme Court may be instituted in any registry of the Court, whether the principal registry or a district registry, and every registrar shall, when so required, issue or file writs of summons, statements of claim, petitions, summonses, and any other writ, process, or proceeding for the institution of any original proceeding, and unless an order to the contrary is made by the Court or a judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to the cause, down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant, or if any sittings of the Court at which such original proceeding can be tried are held at the place at which such district registry is situated) judgment and execution or trial, judgment and execution, as the case may be, may be taken, had, and recorded in the district registry in which the cause is pending.

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- (2) Provided that if a defendant to any original proceeding which is commenced in a district registry neither resides nor carries on business in the district for which such registry is established, he may, subject to the Rules of Court, appear either at that registry or at the principal registry.
- (3) If any defendant appears at the principal registry, the principal registrar shall notify the district registrar of the fact of such appearance, and thereupon the original proceeding shall, subject to the Rules of Court and to the power of transfer, conferred by section 189, proceed in that registry, and the proceedings and original documents in the cause shall be transmitted thereto by the district registrar in the manner directed by section 189(2).

189. Transfer of proceedings from one registry to another

- (1) Subject to the Rules of Court, any party to an original proceeding in the Supreme Court may at any time apply to the Court or a judge for an order that the proceeding be transferred from the registry in which it is pending, if that is not the principal registry, to the principal registry or some other registry, or from the principal registry to a district registry; and the Court or a judge may in its or his discretion make an order accordingly.
- (2) Thereupon the proceedings, and such original documents, if any, as are filed in the registry in which the original proceeding is pending, shall

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be transmitted by the registrar of that registry, to the registry to which the original proceeding is ordered to be transferred, and the original proceeding shall thenceforth proceed in that registry in the same manner as if it had been there originally commenced, and may thereafter be again transferred in like manner to any other registry.

190. Transfer for purpose of application

- (1) When any party to an original proceeding desires to make an application therein to a judge, and no judge is present in the place where the registry in which the original proceeding is pending is situated, the party may lodge with the registrar at that registry a request that the original proceeding be transferred, for the purpose of the application only, to some other registry at a place where a judge is present, or is appointed to, or is expected to, sit; and the original proceeding shall thereupon, without any order, be transferred accordingly.
- (2) The registrar shall thereupon transmit the request to such other registry, with such documents as are necessary for the purpose of the application.
- (3) The application may then be heard and disposed of at such other registry, and as soon as it has been disposed of the original proceeding shall, without further order, be retransferred to the first-mentioned registry, and all documents relating to it shall be retransmitted to that registry.

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- (4) No fee shall be payable in respect of any such transfer or retransfer.
- (5) In any of the cases mentioned in this section, if the application is to be made upon notice to any person, the notice may be given of the application to be made before the Court or a judge at the registry to which the original proceeding is transferred, on a day to be fixed by the registrar of the first-mentioned registry.

191. Production of books, &c., at district registry

The Court or a judge may order any books or documents to be produced, or any accounts to be taken or inquiries to be made, in the office of, or by, any district registrar, and in any such case the district registrar shall proceed to carry all such directions into effect in the manner directed by such order; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any district registrar, the report in writing of such district registrar as to the result of such accounts or inquiries may be acted upon by the Court as to the Court or a judge shall seem fit.

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191B. Effect of, and appeal from, orders of the Associate Judge

- (1) Subject to the Rules of Court, any order or decision made or given by the Associate Judge sitting in chambers or in court in the exercise of a power conferred on him or her by this Act is as valid and binding on, and is enforceable in the same manner against, all parties concerned as an order or decision made or given by a judge sitting in chambers or in court.
- (2) A party affected by an order or decision of the Associate Judge may, within such time as is prescribed by the Rules of Court and subject to any conditions so prescribed, appeal –
 - (a) from an interlocutory order or decision, to a judge sitting in chambers or in court; or
 - (b) from any other judgment, order or decision, to the Full Court.
- (3) The Associate Judge constitutes the Court for the purpose of the exercise of his or her powers and an appeal from a decision or order of the Associate Judge, whether given in court or in chambers, is to be an appeal by way of rehearing.
- (4) On the hearing of an appeal from a decision or order of the Associate Judge, whether given in court or in chambers, a judge sitting alone, whether in court or in chambers, has the same jurisdiction and powers as the Full Court has in

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hearing an appeal against a decision or order of a
judge.

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Part XIII – Miscellaneous Provisions

PART XIII – MISCELLANEOUS PROVISIONS

192. Right of judges to act judicially in cases relating to rates and taxes

(1) A judge of the Supreme Court shall not be incapable of acting in his judicial office in any proceeding by reason of his being as one of several ratepayers, or as one of any other class of persons liable in common with others to contribute to or to be benefited by any rate or tax which may be increased, diminished, or in any way affected by that proceeding.

(2) In this section the expression

rate or tax means any rate, tax, duty, or assessment whether public, general, or local, and also any fund formed from the proceeds of any such rate, tax, duty, or assessment, or applicable to the same or like purposes to which any such rate, duty, or assessment might be applied.

193. Appointment of commissioners

(1) The Chief Justice shall have full power and authority, by any commission to be made by him under the seal of the Court, to appoint any person in any part of this State to be and act as a commissioner of the Court at and for any place or district within the State, or generally throughout the State, with power and authority to administer or take any oath, affidavit, or affirmation, and to take any recognizance of bail

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or otherwise, and to issue any writ, or to do any act and exercise any power or authority which may by law be executed by the Associate Judge or the Registrar of the Court, and to exercise any power or authority which might have been lawfully exercised by any Master of the High Court of Chancery, or by any Surrogate of any Ecclesiastical Court in England, before the abolition of the said offices.

- (2) A commissioner appointed under the power and authority conferred by subsection (1) may be appointed with power to exercise all or any of the powers and authorities mentioned or referred to in that subsection, or such one or more of the said powers and authorities as may be specified in the commission appointing him.
- (3) The Chief Justice shall also have full power and authority, by any commission to be by him made under the seal of the Court, to appoint any person in any part of His Majesty's dominions, or in any foreign country, to be and act as a commissioner of the Court at or for any place or district in such other part of His Majesty's dominions or foreign country, or generally throughout such other part of His Majesty's dominions or foreign country, with power and authority to administer or take any oath, affidavit, or affirmation.
- (4) A commissioner appointed under this section, notwithstanding the provisions of section 9 but subject to the terms of the commission under which he is appointed, shall have the powers specified in subsection (1) or subsection (3), as

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the case may be, in relation to all jurisdictions of the Court, as well as to the jurisdiction of the Court which is subject to this Act.

194. Suitors' funds to vest in the Registrar

All funds transferred or paid into or deposited in court to the credit of any cause, matter or account shall be vested in the Registrar on behalf of the court, and shall be dealt with by him in accordance with this Act and the Rules of Court and any order of the Court or a judge.

194A. Securities in Court

All securities standing in court or at any time deposited in court shall be held by the Registrar in trust to apply them in accordance with the law.

194B. Liability of Public Account for default of the Registrar

- (1) The Public Account is liable to make good to the suitors of the Supreme Court all funds in court.
- (2) If the Chief Justice certifies to the Treasurer in writing that the Registrar has failed to pay any money in court or transfer or deliver any securities in court required by law or by order of the Court or a judge to be paid, transferred or delivered by him or has been guilty of any default with respect to any such moneys or securities the Treasurer shall pay out of the Public Account, which to the necessary extent is

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hereby appropriated, to such persons as are named by the Chief Justice in the certificate such sums as the Chief Justice certifies in writing to be required for the purpose of paying the money so required to be paid or of replacing the securities so required to be transferred or delivered or of making good the default.

194C. Banking and investment of suitors' funds

- (1) All moneys in court shall, subject to the Rules of Court, be paid as soon as practicable after payment into or deposit in court, into an authorised deposit-taking institution approved by the Treasurer or into the Treasury.
- (2) Subject to the Rules of Court and to any order of the Court or a judge moneys paid into an authorised deposit-taking institution or into the Treasury under subsection (1) shall be invested by the Registrar—
 - (a) in such securities as are mentioned in section 5 of the *Trustee Act 1898*;
 - (b) by deposit at interest in the Treasury; or
 - (c) in any other security in which he is authorized by the Rules of Court to invest—

with power to vary investments and where he thinks proper to postpone, or refrain from, investment.

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- (3) The interest or other income from investment under this section shall be dealt with as prescribed by the Rules of Court.

194D. Investment made under order of court

Any money in court which under the Rules of Court or under an order of the Court is required to be laid out in any particular investment shall be so laid out notwithstanding anything in this Act.

194E. Validity of payments, &c., pursuant to Rules of Court

All acts done by the Registrar in reference to funds in court pursuant to and in accordance with the Rules of Court are as valid and effectual as if they had been done in pursuance of an order of the Court.

194F. Remittance by post

Where by Rules of Court the Registrar is authorized to make payments of money to persons entitled thereto upon their request by transmitting to them by post crossed cheques or other documents intended to enable them to obtain payment of the sums expressed therein, the posting of a letter containing a cheque or document and addressed to the person entitled thereto at the address given by him in his request shall, as respects the liability of the Registrar and of the Public Account respectively, be equivalent

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to the delivery of the cheque or document to that person himself.

194G. Vexatious litigants

- (1) If, on an application under this section, the Court is satisfied that a person has persistently and without reasonable grounds instituted vexatious legal proceedings, whether in the Court or any inferior court and whether against the same person or against different persons, the Court, after hearing that person or giving him or her an opportunity of being heard, may, by order, declare that person to be a vexatious litigant.
- (2) Where an order declaring a person to be a vexatious litigant is in force under subsection (1), no legal proceedings are, without the leave of the Court or a judge, to be instituted by him or her in the Court.
- (3) An application under subsection (1) may be made by the Attorney-General, the Solicitor-General, the Director of Public Prosecutions, the Registrar or any person who, in the opinion of the Court or a judge, has a sufficient interest in the matter.
- (4) If proceedings are pending in the Court when an order is made under subsection (1), those proceedings are taken to be stayed unless leave is given as mentioned in subsection (2).
- (5) Where proceedings pending in the court are taken to be stayed and the person declared to be a vexatious litigant has not applied for, or has

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not been granted, leave to proceed in those proceedings, any other party to those proceedings may apply to a judge for an order for the costs incurred by that party in those proceedings.

- (6) The Registrar must, within 14 days after an order is made under subsection (1), cause a copy of the order to be published in the *Gazette*.

194H. Annual report

- (1) On or before 30 November in each year, the Chief Justice must prepare and provide to the Minister an annual report in respect of the year that ended on the preceding 30 June.
- (2) The annual report –
- (a) must include details as to the administration of justice in the Court during that year; and
 - (b) may include any other matter that the Chief Justice considers appropriate.
- (3) The Minister must cause a copy of the annual report to be laid on the table of each House of Parliament within 10 sitting days after receiving it.

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195. Rules of Court

- (1) From and after the commencement of this Act –
- (a) the rules dated 23rd April 1856, regulating the procedure and practice of the Court in its Common Law Jurisdiction;
 - (b) the general orders and the rules of the Supreme Court in its Equity Jurisdiction, dated 7th April 1864;
 - (c) the rules dated 19th November 1878, regulating the procedure and practice in the Supreme Court in Matrimonial Causes;
 - (d) the rules dated 14th April 1921, and 20th December 1929 respectively, made under the provisions of the *Companies Act 1920*; and
 - (e) all other orders, rules, and regulations of the Court regulating the procedure or practice of the Court in any part of the jurisdiction of the Court which is subject to this Act –

to the extent that the same are inconsistent with this Act or the Rules of Court, are hereby abrogated;

- (f) the rule dated 7th May 1918, regulating the taking of exceptions to the directions

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given by a judge to a jury, is hereby absolutely abrogated as to all courts;

- (g) all orders, rules, and regulations of the Court fixing or prescribing the fees and percentages to be taken in the Court or by any officer thereof, in respect of any proceeding (whether original or on appeal) in any part of the jurisdiction of the Court which is subject to this Act, and all orders, rules, and regulations of the Court fixing or prescribing the fees and allowances to be payable to practitioners of the Court in respect of any such proceeding are hereby absolutely abrogated.
- (2) The procedure and practice of the Supreme Court in all contentious causes and matters which before the commencement of this Act were within the ecclesiastical jurisdiction of the Court shall be regulated by the Rules of Court for the time being in force under this Act so far as the same extend and are applicable to such causes and matters, but, so far as the same do not extend to such causes and matters, the rules now in force regulating the procedure and practice in the ecclesiastical jurisdiction of the Court shall be applied.
 - (3) Subject to the *Admiralty Act 1988* of the Commonwealth and the Rules made under section 41 of that Act, the procedure and practice of the Supreme Court in admiralty causes and matters shall be regulated by the Rules of Court for the time being in force under this Act.

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- (4)
- (5) Nothing in the preceding subsections of this section contained shall affect –
 - (a) any practice of the Court, or any usage of, or in, or connected with any of the offices of the Court or the officers thereof, which originated in, or was sanctioned by, any of the rules or orders hereby abrogated, except so far as the same may be inconsistent with the Rules of Court in force for the time being under this Act; or
 - (b) any action, suit, cause, matter, or proceeding duly begun, or any appeal pending, before the commencement of this Act; and all such actions, suits, causes, matters, proceedings, and appeals shall be proceeded with and completed in the same form and manner as if this Act had not passed.

196. Rules in Schedule II to regulate procedure and practice until altered or annulled

The rules (including forms, fees, percentages, and scales of costs) in Schedule II shall, as to all matters to which they extend, regulate the procedure and practice of the Court in the exercise of the jurisdiction of the Court which is subject to this Act, and such rules shall, for all purposes and within the meaning of all provisions in this Act referring to the Rules of Court under this Act, be deemed to have been

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made under this Act, but subject to the provisions of this Act such rules or any of them may be annulled, remade, added to, amended, or altered by the authority by which Rules of Court may be made under this Act.

197. Power of judges to make Rules of Court

- (1) Subject to the provisions of section 203, the judges of the Supreme Court, or a majority of them, may make Rules of Court, not inconsistent with this Act for carrying this Act into effect, and in particular for the following matters in addition to those for which Rules of Court are authorized to be made by any other provision in this Act:
 - (a)
 - (b) Regulating and prescribing the form, mode, and course of proceeding with respect to the process and pleadings in, and the trial of, and the adjudication in, and all matters relating to the costs of and in, and the powers of the Court or any judge thereof with respect to, any proceedings in any part of the jurisdiction of the Court (original or appellate) which is subject to this Act, including the regulation of all matters relating to new trials and appeals in causes and matters tried by or before a judge, and conferring and regulating the power to grant new trials and hear appeals in cases in which any cause or

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matter or issue therein has been tried by an officer of the Court, judge of an inferior court of civil jurisdiction, or referee;

- (c) Authorizing and providing for the service out of the jurisdiction of the Court of any writ of summons, statement of claim, petition, or any other process instituting an action, or any information, writ, warning, summons, petition, citation, rule, order, or other process whatsoever issued out of, filed in, extracted from, or granted by the Court in any cause or matter, or of any notice of any such writ, statement of claim, petition, or other such process (whether instituting an action or not) as aforesaid; and authorizing and providing for substituted service of any such writ, statement of claim, petition or other such process (whether instituting an action or not) as aforesaid;
- (ca) Authorising and providing for discovery –
- (i) to ascertain the description of a person sufficiently for the purpose of commencing a proceeding in court against that person; or
 - (ii) to enable a decision to be made whether to commence, continue or defend a proceeding in the court; or

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- (iii) to enable a party to a proceeding in the court to obtain information in relation to that proceeding from a person who is not a party;
- (d) Regulating (subject to the provisions of this Act) the exercise of any part of the jurisdiction of the Court which is subject to this Act;
- (e) Regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceeding in any part of the jurisdiction of the Court which is subject to this Act, or on any application in connection with, or at any stage of, any such proceeding;
- (f) Empowering the Associate Judge to exercise all of the powers of the Court, including the exercise of inherent jurisdiction which may be exercised by a single judge sitting in chambers or by a single judge sitting in court without a jury except for the hearing and determination of –
 - (i)
 - (ii) appeals, other than a review of a taxation of costs by an officer of the Court; and
 - (iii) applications for relief similar to *certiorari*, *mandamus* or prohibition; and

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- (iv) applications for orders of review under the *Judicial Review Act 2000*;
- (g) Regulating all matters relating to the duties of the officers of the Court, and the procedure and practice in the registries of the Court;
- (ga) Specifying, for the purposes of section 191B, which orders and decisions of the Associate Judge are to be regarded as interlocutory and which are not to be so regarded;
- (h) Prescribing the forms to be used for the purposes of any such proceeding as is referred to in paragraph (b);
- (i) Prescribing and regulating the fees to be charged by practitioners of the Court for the work done by them practising in the Court in relation to any such proceeding as aforesaid, and for the taxation of their bills of costs, either as between party and party or as between solicitor and client;
- (j) Imposing, prescribing, and fixing the fees and percentages (including percentages in the case of proceedings relating to lunatics and their estates, and persons with respect to whom an order has been made under Part VIII) to be taken or collected in the Court or by the officers of the Court in respect of any such proceedings as are referred to in

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paragraph (b) or this paragraph or of the execution of the process of the Court in any such proceedings, and the fees to be taken by commissioners of the Court and examiners appointed by the Court;

- (k) For regulating the procedure and practice for the service on any person in this State of any process or citation where, in any civil cause or matter pending before any court or tribunal of a foreign country, a letter of request from such court or tribunal for service of any process or citation on any person in this State is transmitted to the Court by the Attorney-General, with an intimation that it is desirable that effect should be given to the same;
- (l) For giving effect in this State to the provisions of the Imperial Act intituled the *Foreign Tribunals Evidence Act, 1856*, and for regulating the procedure thereunder;
- (m) For regulating and prescribing the procedure and practice with respect to appeals to the Supreme Court or a judge thereof from any inferior court or any statutory tribunal not being a court from which an appeal lies to the Supreme Court or a judge thereof, and (notwithstanding any provision in any statute) for limiting the time within which appeals from inferior courts or such statutory tribunals as aforesaid to

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the Supreme Court or a judge thereof may be instituted, and (notwithstanding any provision in any statute) prescribing any form or mode of procedure in substitution for any form or mode of procedure prescribed by any statute for appeals from any inferior court or any such statutory tribunal as aforesaid;

- (n) Requiring the judges or judge or any officer of any inferior court from which an appeal lies to the Supreme Court or a judge thereof, or any such statutory tribunal as is referred to in paragraph (m) or any officer thereof, to record or take a note of the evidence adduced, and of any questions, contentions, or objections raised, and of any other proceedings in or on any proceeding or application pending before or made to any such Court or statutory tribunal, and requiring any such judge, statutory tribunal, or officer to deliver to the party or parties to any such proceeding or application, or to any person entitled to appeal to the Court or a judge thereof from any judgment, order, ruling, or other judicial or quasi-judicial act given, made, or done in any such proceeding or application, and also to transmit to the Court or any judge thereof or any registrar thereof, a note of any such evidence, question, contention, objection, or proceeding, and of any such judgment, order, ruling, or other judicial

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or quasi-judicial act, and the reasons therefor;

- (o) Conferring the power to order the transfer of any proceedings in an inferior court of civil jurisdiction to the Supreme Court and regulating and prescribing the procedure and practice in connection with the transfer of proceedings from any inferior court of civil jurisdiction to the Supreme Court, or from the Supreme Court to any inferior court of civil jurisdiction;
- (p) Conferring and regulating the power to order and require any judge of any inferior court of civil jurisdiction to take any evidence, or examination of any witness, or to make any inquiry concerning any question or matter arising in any cause or matter in the Supreme Court, and to regulate the procedure and practice to be followed and observed in the execution of any such order;
- (q) Providing for and regulating the service and execution of any process of the Supreme Court by any officer or officers of any inferior court (whether of civil or criminal jurisdiction);
- (r) Providing for and regulating the issue and execution of commissions and the making and execution of orders appointing commissioners and examiners and other officers or persons to take any

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evidence or examination of any witness or person at any place whether within this State or elsewhere;

- (s) For repealing any enactment which relates to any matter with respect to which rules are made under this section;
- (t) Regulating and providing for the awarding, apportionment, payment, and all other matters relating to the costs of any proceedings in any part of the jurisdiction of the Court (original or appellate) which is subject to the provisions of this Act;
- (u) The service and execution of all process of the Court and the enforcement of all judgments and orders of the Court or any judge thereof and of all process of the Court;
- (v) Conferring on the Associate Judge, the Registrar, or the district registrars of the Court, or any one or more of those officers–
 - (i) jurisdiction to make orders *nisi* for the attachment of debts and any other moneys attachable under the Rules of Court;
 - (ii) jurisdiction that the judges making the rule deem to be rather of a ministerial than of a judicial character, mere matter of detail,

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or not of sufficient importance to be disposed of by a judge; and

- (iii) any other jurisdiction conferred on any such officer by the rules originally set forth in Schedule II or by the *Rules of the Supreme Court 1958*;
- (w) Requiring practitioners of the Court or any law society to make such inquiries and investigations with respect to applications by persons seeking or claiming to institute or defend or to become a party to any proceeding in the Court as a poor person as may be prescribed by the Rules of Court;
- (wa) For making provision for or with respect to the reference of any question arising in a proceeding to a special referee for inquiry and report;
- (x) Generally, for regulating and making provision for all matters whatsoever relating to the procedure and practice of the Court in any part of the jurisdiction of the Court which is subject to this Act, including the jurisdiction, powers, and matters conferred, prescribed, provided for, or regulated by the rules formerly set forth in Schedule II or by the *Rules of the Supreme Court 1958*.

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- (1A) A reference in subsection (1)(f)(ii) to an officer of the Court does not include the Associate Judge.
- (2) In any case in which any process of any kind whatsoever which has been –
- (a) issued out of, filed in, or extracted from the Court in any proceeding which is subject to the provisions of this Act (whether the process was issued, filed, or extracted for the purpose of instituting, or in the course of, the proceeding); or
 - (b) granted by the Court or a judge thereof in the exercise of any part of the jurisdiction of the Court which is subject to this Act
-

and is served out of the jurisdiction of the Court in accordance with the Rules of Court, such service shall (subject to the Rules of Court) have the same effect and operation with respect to subsequent proceedings in the original proceeding or matter in which the same was issued, filed, extracted, or granted as it would have had if the person on whom it was served had at the time of the service thereof been in this State.

- (3) Notwithstanding the provisions of any statute, the Rules of Court may confer on the Supreme Court or a judge thereof, for the purpose of hearing and determining any appeal from an inferior court, or any statutory tribunal not being a court, all or any of the powers by this Act

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conferred on a Full Court by Part V, or any further or other powers which may be deemed necessary or convenient.

- (3A) Under subsection (1)(f) jurisdiction to refer a bill of costs for taxation or any other matter to an officer of the Court may be conferred on the Associate Judge so that—
- (a) without a reference he may do what he might otherwise have done on a reference by a judge; or
 - (b) he may refer the matter to another officer of the Court.
- (3B) Rules of Court made pursuant to this section may adopt, either wholly or in part and with or without modification, and either specifically or by reference, Rules of Court of the Federal Court of Australia or a Supreme Court of another State or a Territory as in force for the time being.
- (4) Except so far as the Rules of Court otherwise expressly provide, the Rules of Court with respect to any of the matters mentioned in subsection (1)(m) shall be exhaustive, and shall exclude any provision regulating or relating to any such matter contained in any Act passed before the commencement of the Act or in any Rules of Court made thereunder.
- (5) Rules of Court shall not make provision for any matter for which provision may be made under Part III.

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- (6) The fees and percentages imposed, prescribed, or fixed by Schedule II may be increased, reduced, or abolished by any Rule of Court made in pursuance of this section, and any such Rule of Court may impose, prescribe, or fix any such fee or percentage as is mentioned in subsection (1)(j), and any such Rule of Court may be annulled, remade, added to, amended, or altered in pursuance of the power conferred by this section by abolishing any fee or percentage, and by imposing any increased or reduced fee or percentage or any new or additional fee or percentage or otherwise, and any such Rule of Court shall have effect as if enacted in this Act.

198. Application of section 197

- (1) Rules of Court may be made under section 197 for the purpose of regulating and prescribing the procedure and practice of the Court in any case in which the procedure or practice is regulated by any enactment in force at the commencement of this Act (including such part or parts of the statutes set out in Schedule I as is or are stated in the third column of that schedule to be repealed).
- (2) Section 197 shall –
- (a) extend and apply to all proceedings by and against the Government of this State; and
 - (b) authorize the making in pursuance of that section of Rules of Court under and for the purpose of any statute passed after the commencement of this Act which,

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expressly or by implication, directs or authorizes the making of Rules of Court, and also under or for the purposes of any statute passed before the commencement of this Act which, so far as the same is unrepealed, expressly or by implication directs or authorizes the making of any orders, rules, or regulations for any purpose for which Rules of Court can be made under section 197, or for any similar purpose.

199. Application of section 197

- (1) Section 197 shall extend and apply to all causes and matters within the jurisdiction of the Court which is subject to this Act with respect to which rules of procedure or practice –
 - (a) have been or might have been made under any statute or any provision in any statute which is repealed by this Act; or
 - (b) may be made under any unrepealed Act.
- (2) The power to make Rules of Court conferred by section 197 shall include power to make rules with respect to any matter contained in any statute conferring or otherwise relating to any part of the jurisdiction of the Court which is subject to this Act, whether such statute expressly authorizes rules to be made thereunder or not.

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200. Rules of Court may be made in substitution for statutory rules of procedure

- (1) Where any provision prescribing, regulating, or otherwise relating to the procedure or practice of the Court, in the exercise of any part of the jurisdiction (original or appellate) of the Court which is subject to this Act, is contained in any Act (other than this Act), Rules of Court may be made under this Act in substitution for such provision, or altering or modifying the same, to any extent that may be deemed necessary or convenient.
- (2)

201. Provision for cases of doubt or difficulty

- (1) In any case in which no form or manner of procedure is provided for by this Act or the Rules of Court, or in which any difficulty arises or doubt exists as to the procedure or practice to be followed in, or with respect to, any proceeding in the Court, or about to be instituted therein, the Court or a judge, if satisfied that such case is unprovided for, or that there is any such difficulty or doubt, shall have jurisdiction to make such order and give such directions as to the institution or prosecution of the proceeding as may be necessary to meet the case, and any proceeding or step in a proceeding taken in accordance with any such order or direction, shall be deemed to be regular and sufficient. Any such order or direction made or given by a judge may be varied or discharged by a Full Court, but

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the variation or discharge of the order or direction shall not invalidate or affect the regularity or sufficiency of any proceeding or step in a proceeding taken pursuant to any such order or direction.

- (2) If the case which is not provided for, or with respect to which the difficulty has arisen or the doubt exists, is as to the form or manner in which a proceeding should be instituted, or if it arises in a matter which will be, or has been, heard *ex parte*, the application for an order or directions under subsection (1) shall be made to the Court or a judge (whether sitting in court or in chambers) by or by way of motion by or on behalf of the person desiring to institute the proceeding or the person prosecuting the matter, as the case may be.
- (3) If the case which is not provided for, or with respect to which the difficulty has arisen or the doubt exists, arises in a cause, the application for an order or for directions under subsection (1) shall, if made to the Court or a judge sitting in court as a court be made by motion, and if made to a judge sitting in chambers be made by summons, and in either case in accordance with the Rules of Court.

202. Rule Committee

- (1) For the purpose of providing for the improvement of the procedure and practice of the Court there shall be a committee, to be called “the Rule Committee”, which shall consist of the

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judges of the Supreme Court, of the Associate Judge, and of 4 practitioners of the Court (hereinafter referred to as “the appointed members of the committee”) to be appointed by the Governor, and it shall be the duty of such committee to consider the working and operation of the Rules of Court for the time being in force, and the working of the several offices of the Court, and the arrangements relative to the duties of the several officers of the Court, and the arrangements as to the registries of the Court, and to inquire into and examine any defects which may appear to exist in the system of procedure in the Court, and to formulate and to recommend such alterations in such arrangements as aforesaid, and the making of such new or additional Rules of Court, and such alteration in the Rules of Court for the time being in force, as they or a majority of them may think desirable for the better administration of justice.

- (2) Subject to the provisions of subsection (6), the appointed members of the committee shall hold office for a period of 5 years.
- (3) The Rule Committee shall meet once at least in each year, and as often as the Chief Justice may direct.
- (4) Meetings of the Rule Committee shall be convened by or on the direction of the Chief Justice. Six members shall form a quorum, but every Rule of Court which is required to be recommended or approved by the Rule Committee, or a majority of such Committee,

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shall be recommended or approved, as the case may be, by at least a majority of all the members of the Rule Committee, of whom 4 shall be judges. At every meeting of the Rule Committee at which the Chief Justice is present he shall preside thereat. If the Chief Justice is absent, but at least two other judges are present, the senior puisne judge present shall preside, or if only one judge is present he shall preside. If no judge is present the members of the Committee present shall elect a chairman. Subject to the provisions of this Act the Rule Committee may regulate its own procedure.

- (5) The Rule Committee or a majority of such Committee may recommend any new Rules of Court or any alteration in or addition to the Rules of Court for the time being in force which the Rule Committee or a majority of such Committee think necessary or desirable, and the Rule Committee or a majority of such Committee may approve of new Rules of Court or any alteration in or addition to the Rules of Court for the time being in force which the judges or a majority of them may think necessary or desirable. For the purpose of giving effect to the provisions of this section, the Rule Committee or a majority of such Committee may recommend or approve of the abrogation of all or any of the Rules of Court for the time being in force.
- (6) The Governor may at any time revoke the appointment of any appointed member of the Rule Committee, and may at any time make any new appointment thereto, or fill up any vacancy

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which may occur among the appointed members of the Rule Committee.

203. Rules of Court to be recommended or approved of by Rule Committee

- (1) No Rule of Court relating to or affecting the procedure or practice of the Court in any part of the jurisdiction of the Court which is subject to this Act shall be made by the judges of the Supreme Court or a majority of them either under this Act or any other statute relating to any part of the jurisdiction of the Court which is subject to this Act, unless such rule has been recommended or approved by the Rule Committee or a majority of all the members of such Committee.
- (2) Any statement contained in any Rule or Rules of Court made under this Act, or in any order or notice or other instrument relating to any such rule or rules made or issued, or published by or under the authority of, the judges of the Supreme Court or a majority of them, that such rule or rules has or have been recommended or approved, as the case may be, by the Rule Committee or a majority of such Committee, shall be conclusive evidence of the fact that such rule or rules was or were so recommended or approved, as the case may be, and that all the requirements of this Act with respect to the making of such rule or rules have been duly and regularly observed and complied with.

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204. Rules of Court to be laid before Parliament

Every Rule of Court made in pursuance of this Act which is required to be recommended or approved by the Rule Committee or a majority of such Committee shall be laid before both Houses of Parliament within 40 days next after it is made if Parliament is then sitting, or, if Parliament is not then sitting, then within 40 days after the next meeting of Parliament; and if an address is presented to the Governor by either House of Parliament within the next subsequent 40 sitting days of the House, praying that any such rule may be annulled, the Governor may thereupon annul it, and the rule so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which have in the meantime been taken under it.

205. Provisions of this Act as to authority by whom and manner in which Rules of Court shall be made exhaustive

The provisions of this Act as to the authority by whom, and the manner in which, Rules of Court shall be made, and as to the conditions to be complied with to make the same finally operative, shall be exhaustive and shall exclude the operation of any other Act, but this provision shall not be construed as repealing any provision in any other Act which authorizes Rules of Court to be made.

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SCHEDULE I – REPEALS
IMPERIAL STATUTES

Regnal year and number of Act	Title of Act.	Extent of repeal.
5 Geo. II, c. 19	—	Sections 2 and 3, so far as the same affect proceedings in the Supreme Court of Tasmania
13 Geo. II, c. 18	—	Section 5, so far as the same affects proceedings in the Supreme Court of Tasmania
57 & 58 Vict., c. 60	<i>The Merchant Shipping Act, 1894</i>	Subsection (4) of Section 419 and Subsection (2) of Section 422, so far as the same relate to ships registered in this State which are not subject to the provisions of the <i>Navigation Act, 1912-1926</i>

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STATUTES OF TASMANIA

5 Will. IV No. 2	An Act for introducing into this Island parts of certain Statutes passed in England relative to the Examination of Witnesses, to giving Relief in Certain Cases of Conflicting Claims, and to the Improvement of Proceedings in Prohibition and Writs of <i>Mandamus</i>	The whole Act
5 Will. IV No. 3	An Act to provide for and regulate Process in Actions at Law against persons Absent from the Colony	The whole Act
11 Vict. No. 3	An Act for the Better Protection of the Sheriff of Van Diemen's Land	Section 1
18 Vict. No. 9	<i>Common Law Procedure Act 1854</i>	The whole Act, except sections 112, 137 to 140, 182 to 187, 191 to 194, 200, 201, 206 to 207, and 210

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19 Vict. No. 16	<i>Common Law Procedure Act, No. 2</i>	The whole Act, except sections 18, 43, 85 to 87, and 91
21 Vict. No. 44	<i>Equity Procedure Act</i>	The whole Act, except sections 61 to 66, 91, and 103
24 Vict. No. 1	<i>Matrimonial Causes Act 1860</i>	Sections 26, 27, 29, 44, 46, and 51
24 Vict. No. 4	<i>Summary Procedure on Bills of Exchange Act</i>	The whole Act
26 Vict. No. 2	<i>Common Law Procedure Act, No. 2 No. 3</i>	The whole Act
27 Vict. No. 21	<i>Equity Procedure Act, No. 2</i>	The whole Act
29 Vict. No. 11	<i>Equity Procedure Act, No. 3</i>	The whole Act
36 Vict. No. 1	An Act to amend the Law relating to Interest on Judgments	The whole Act, so far as the same relates to the Supreme Court
40 Vict. No. 5	<i>Building Societies Act 1876</i>	Section 5

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41 Vict. No. 2	An Act to amend the Common Law Procedure Act, so far as respects the Terms and Sittings of the Supreme Court of Tasmania	The whole Act
53 Vict. No. 15	An Act to amend the Law relating to the Management and Administration of Estates in Lunacy	The whole Act
55 Vict. No. 24	<i>Crown Redress Act 1891</i>	The whole Act, so far as the same relates to proceedings in the Supreme Court
55 Vict. No. 25	<i>Crown Remedies Act 1891</i>	The whole Act, except sections 1 to 5 and 19 and the forms numbered 1 to 4 in the schedule thereto
57 Vict. No. 13	<i>Equity Procedure Act, No. 4</i>	The whole Act
60 Vict. No. 17	<i>Enforcement of Judicial Orders Act 1896</i>	The whole Act, except section 7
62 Vict. No. 34	<i>Trustee Act 1898</i>	Sections 45 to 47
63 Vict. No. 32	<i>Jury Act 1899</i>	Section 62

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64 Vict. No. 22	<i>Common Law Procedure Act, No. 5</i>	The whole Act
3 Edw. VII No. 19	<i>Legal Procedure Act 1903</i>	Section 3 (so far as the same relates to the Supreme Court) and sections 4, 5 and 8
1 Geo. V No. 20	<i>Evidence Act 1910</i>	Section 25
8 Geo. V No. 18	<i>Supreme Court Act 1917</i>	The whole Act
18 Geo. V No. 52	<i>Tasmanian Government Officers' Salaries Attachment Act 1927</i>	The whole Act so far as the same relates to the enforcement as therein mentioned of any judgment or order of the Supreme Court
22 Geo. V No. 25	<i>Reciprocal Enforcement of Judgments Act 1931</i>	The whole Act

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NOTES

The foregoing text of the *Supreme Court Civil Procedure Act 1932* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 9 September 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Supreme Court Civil Procedure Act 1932</i>	No. 58 of 1932	1.1.1934
<i>Local Courts Act 1934</i>	No. 51 of 1934	1.1.1934 (s. 5)
<i>Supreme Court Civil Procedure Act 1934</i>	No. 60 of 1934	1.1.1934 s. 2(I)
<i>Real Property Act 1934</i>	No. 52 of 1934	13.12.1934
<i>Supreme Court Civil Procedure Act 1934</i>	No. 60 of 1934	13.12.1934 Remainder
<i>Statute Law Revision Act 1934</i> and proclamations thereunder	No. 78 of 1934	13.12.1934
<i>Administration and Probate Act 1935</i>	No. 38 of 1935	18.10.1935
<i>Conveyancing and Law of Property Act 1935</i>	No. 97 of 1935	31.1.1936
<i>Supreme Court Civil Procedure Act 1957</i>	No. 34 of 1957	30.9.1957
<i>Supreme Court Civil Procedure Act 1958</i>	No. 31 of 1958	11.7.1958
<i>Statute Law Revision Act 1958</i>	No. 36 of 1958	24.7.1958
<i>Companies Act 1959</i>	No. 29 of 1959	1.11.1959
<i>Supreme Court Civil Procedure Act 1959</i>	No. 40 of 1959	30.11.1959
<i>Companies Act 1962</i>	No. 66 of 1962	1.1.1963
<i>Supreme Court Civil Procedure Act 1963</i>	No. 4 of 1963	2.5.1963
<i>Local Government (Consequential Amendments) Act 1962</i>	No. 68 of 1962	1.1.1964
<i>Mental Health Act 1963</i>	No. 63 of 1963	1.12.1964
<i>Supreme Court Act 1965</i>	No. 44 of 1965	3.12.1965
<i>Decimal Currency Act 1965</i>	No. 55 of 1965	14.2.1966
<i>Supreme Court Civil Procedure Act 1965</i>	No. 36 of 1965	1.11.1966
<i>Supreme Court Civil Procedure Act 1971</i>	No. 6 of 1971	29.4.1971

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Act	Number and year	Date of commencement
<i>1971</i>		
<i>Supreme Court Civil Procedure Act 1973</i>	No. 84 of 1973	19.12.1973
<i>Supreme Court Act 1974</i>	No. 92 of 1974	1.1.1975
<i>Statute Law Revision Order (No. 2) 1977</i>	S.R. 1977, No. 150	29.6.1977
<i>Supreme Court Act 1977</i>	No. 50 of 1977	31.8.1977
<i>Supreme Court Civil Procedure Amendment Act 1979</i>	No. 52 of 1979	5.12.1979
<i>Companies and Securities Legislation (Miscellaneous Amendments) Act 1982</i>	No. 9 of 1982	30.6.1982
<i>Supreme Court Civil Procedure Amendment Act 1982</i>	No. 34 of 1982	14.10.1982
<i>Statute Law Revision Act 1982</i>	No. 99 of 1982	18.1.1983
<i>Supreme Court Civil Procedure Amendment Act 1985</i>	No. 2 of 1985	17.4.1985
<i>Supreme Court Civil Procedure Amendment Act 1984</i>	No. 39 of 1984	15.9.1985
<i>Tasmanian State Service (Miscellaneous Amendments) Act 1984</i>	No. 29 of 1984	1.12.1985
<i>Common Law Procedure Act (Repeal) Act 1985</i>	No. 119 of 1985	12.12.1985
<i>Civil Process Act 1985</i>	No. 73 of 1985	1.1.1986
<i>Supreme Court Civil Procedure Amendment Act 1986</i>	No. 40 of 1986	23.5.1986
<i>Commercial Arbitration Act 1986</i>	No. 91 of 1986	1.1.1987
<i>Justice Legislation (Miscellaneous Amendments) Act 1990</i>	No. 20 of 1990	11.7.1990
<i>Vexatious Litigants Act 1994</i>	No. 65 of 1994	25.11.1994
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Crown Proceedings Act 1993</i>	No. 14 of 1993	1.6.1995
<i>Local Government (Consequential Amendments) Act 1995</i>	No. 30 of 1995	1.9.1995
<i>Financial Institutions (Miscellaneous Amendments) Act 1996</i>	No. 62 of 1996	1.1.1997
<i>Magistrates Court (Civil Division) Amendment Act 1993</i>	No. 73 of 1993	30.3.1998 On the day on which the Magistrates Court (Civil Division) Act 1992 commences
<i>Justice Legislation (Miscellaneous Amendments) Act 1999</i>	No. 61 of 1999	24.11.1999
<i>Financial Sector Reform (Tasmania)</i>	No. 74 of 1999	1.1.2000

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Act	Number and year	Date of commencement
<i>(Miscellaneous Amendments) Act 1999</i>		
<i>Justice Legislation (Miscellaneous Amendments) Act 2000</i>	No. 62 of 2000	14.11.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Corporations (Consequential Amendments) Act 2001</i>	No. 42 of 2001	15.7.2001
<i>Judicial Review Act 2000</i>	No. 54 of 2000	1.12.2001
<i>Valuation of Land Act 2001</i>	No. 102 of 2001	28.6.2002
<i>Evidence (Consequential Amendments) Act 2001</i>	No. 80 of 2001	1.7.2002
<i>Justice (Miscellaneous Amendments) Act 2003</i>	No. 69 of 2003	15.12.2003
<i>Supreme Court Civil Procedure Amendment Act 2004</i>	No. 30 of 2004	27.10.2004
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2004</i>	No. 44 of 2004	16.11.2004
<i>Electoral (Consequential Amendments) Act 2004</i>	No. 53 of 2004	16.2.2005
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2005</i>	No. 6 of 2005	6.5.2005
<i>Juries Act 2003</i>	No. 48 of 2003	1.1.2006
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2006</i>	No. 16 of 2006	1.11.2006
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006</i>	No. 43 of 2006	18.12.2006
<i>Supreme Court Amendment Act 2007</i>	No. 55 of 2007	1.3.2008
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2009</i>	No. 76 of 2009	11.12.2009
<i>Commercial Arbitration (Consequential Amendments) Act 2011</i>	No. 9 of 2011	1.10.2012
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	1.12.2012
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Supreme Court Civil Procedure Amendment Act 2019</i>	No. 14 of 2019	9.9.2019

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TABLE OF AMENDMENTS

Provision affected	How affected
Section 1	Amended by 25 Geo. V No. 78 and S.R. 1977, No. 150
Section 2	Amended by 25 Geo. V No. 60, s. 2 and s. 3 and S.R. 1977, No. 150
Section 3	Amended by No. 40 of 1959, s. 2, 25 Geo. V No. 60, s. 2, 25 Geo. V No. 78, No. 44 of 1965, s. 5 and Sched. 1, S.R. 1977, No. 150, No. 29 of 1984, s. 3 and Sched. 1, No. 30 of 1995, s. 3 and Sched. 1, No. 102 of 2001, Sched. 1, No. 44 of 2004, s. 48 and No. 55 of 2007, Sched. 1
Section 4	Substituted by No. 14 of 2019, s. 4
Section 6	Amended by 25 Geo. V No. 60, s. 2
Section 8	Amended by 25 Geo. V No. 60, s. 2
Section 9	Amended by 25 Geo. V No. 52, s. 2, 25 Geo. V No. 60, s. 2, 25 Geo. V No. 78, No. 73 of 1985, s. 7, No. 20 of 1990, s. 8, No. 73 of 1993, Sched. 1, No. 54 of 2000, Sched. 4, No. 53 of 2004, Sched. 1 and No. 14 of 2019, s. 5
Section 11	Amended by 25 Geo. V No. 60, s. 2, 26 Geo. V No. 38, s. 2 and Sched. 1, No. 68 of 1962, s. 37, 26 Geo. V No. 97, s. 2 and Sched. 1, S.R. 1977, No. 150, No. 119 of 1985, s. 3, No. 68 of 1994, s. 3 and Sched. 1 and No. 54 of 2000, Sched. 4
Section 12	Amended by No. 54 of 2000, Sched. 4
Section 13	Amended by No. 34 of 1957, s. 2, No. 36 of 1965, s. 2, No. 55 of 1965, s. 5, No. 39 of 1984, s. 4 and No. 40 of 1986, s. 3
Section 15	Amended by No. 63 of 1963, scheds. 1 & 6 and S.R. 1977, No. 150
Section 16	Amended by 25 Geo. V No. 60, s. 2
Section 18	Repealed by No. 14 of 2019, s. 6
Section 18A	Inserted by No. 50 of 1977, s. 2 Repealed by No. 43 of 2006, s. 60
Section 19	Amended by No. 50 of 1977, s. 3, No. 34 of 1982, s. 3 Subsection (2) substituted by No. 34 of 1982, s. 3 Substituted by No. 43 of 2006, s. 60
Section 20	Amended by No. 50 of 1977, s. 4, S.R. 1977, No. 150, No. 52 of 1979, s. 3 Subsection (4A) inserted by No. 34 of 1982, s. 4 Substituted by No. 43 of 2006, s. 60
Section 20A	Inserted by No. 4 of 1963, s. 2 Repealed by No. 43 of 2006, s. 60
Section 21	Amended by No. 50 of 1977, s. 5 Repealed by No. 43 of 2006, s. 60
Section 22	Amended by No. 50 of 1977, s. 6 Subsection (1A) added by No. 50 of 1977, s. 6

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Provision affected	How affected
	Repealed by No. 43 of 2006, s. 60
Section 23	Repealed by No. 43 of 2006, s. 60
Section 24	Repealed by No. 43 of 2006, s. 60
Section 25	Repealed by No. 43 of 2006, s. 60
Section 26	Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 9 of 2011, Sched. 1
Section 27	Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 9 of 2011, Sched. 1
Section 28	Amended by No. 31 of 1958, s. 2, No. 36 of 1965, s. 3 and s. 4, No. 55 of 1965, s. 5, No. 39 of 1984, s. 5, No. 62 of 2000, Sched. 1 and No. 43 of 2006, s. 61
Section 29	Amended by No. 68 of 1994, s. 3 and Sched. 1
Section 30	Amended by No. 55 of 1965, s. 5 Subsection (1) substituted by No. 39 of 1984, s. 6 Subsection (1A) inserted by No. 39 of 1984, s. 6 Repealed by No. 48 of 2003, Sched. 9
Section 31	Substituted by No. 39 of 1984, s. 7 Repealed by No. 48 of 2003, Sched. 9
Section 32	Amended by No. 80 of 2001, Sched. 1
Section 33	Amended by S.R. 1977, No. 150
Section 34	Amended by No. 55 of 1965, s. 3 and Sched. 1, No. 2 of 1985, s. 3 and No. 69 of 2003, Sched. 1
Section 35	Amended by 25 Geo. V No. 60, s. 2
Section 35A	Inserted by No. 14 of 2019, s. 7
Section 37A	Inserted by No. 20 of 1990, s. 9
Section 37B	Inserted by No. 20 of 1990, s. 9
Section 37C	Inserted by No. 20 of 1990, s. 9
Section 37D	Inserted by No. 20 of 1990, s. 9
Section 37E	Inserted by No. 20 of 1990, s. 9
Section 37F	Inserted by No. 20 of 1990, s. 9
Section 37G	Inserted by No. 20 of 1990, s. 9
Section 38	Repealed by No. 14 of 2019, s. 8
Section 39	Amended by S.R. 1977, No. 150
Section 40	Amended by No. 54 of 2000, Sched. 4
Section 42	Amended by S.R. 1977, No. 150
Section 43	Amended by No. 55 of 1965, s. 5
Section 44	Amended by 25 Geo. V No. 60, s. 2
Section 47	Amended by 25 Geo. V No. 60, s. 2, No. 84 of 1973, s. 2 and S.R. 1977, No. 150
Section 50	Amended by S.R. 1977, No. 150
Section 51	Amended by S.R. 1977, No. 150
Section 52	Repealed by No. 14 of 2019, s. 9
Section 53	Amended by No. 6 of 1971, s. 2
Section 54	Amended by 25 Geo. V No. 60, s. 2, No. 29 of 1984, sched. 1 Repealed by No. 14 of 1993, s. 19
Section 55	Amended by S.R. 1977, No. 150
Section 56	Amended by 25 Geo. V No. 60, s. 2

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Provision affected	How affected
Section 57	Amended by 25 Geo. V No. 60, s. 2
Section 59	Amended by 25 Geo. V No. 78
Section 60	Amended by S.R. 1977, No. 150
Section 61	Amended by 25 Geo. V No. 60, s. 2
Part VII	Repealed by No. 54 of 2000, Sched. 4 Inserted by No. 14 of 2019, s. 10
Division 1 of Part VII	Inserted by No. 14 of 2019, s. 10
Section 64	Amended by 25 Geo. V No. 60, s. 2, No. 6 of 1971, s. 3, S.R. 1977, No. 150, No. 29 of 1984, sched. 1 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 65	Amended by S.R. 1977, No. 150 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Division 2 of Part VII	Inserted by No. 14 of 2019, s. 10
Section 66	Amended by S.R. 1977, No. 150, No. 29 of 1984, sched. 1 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 67	Amended by No. 29 of 1984, sched. 1, No. 20 of 1990, s. 67 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 68	Amended by 25 Geo. V No. 78, No. 29 of 1984, sched. 1 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 69	Amended by No. 29 of 1984, sched. 1 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 70	Amended by No. 29 of 1984, sched. 1 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 71	Amended by 25 Geo. V No. 60, s. 2, S.R. 1977, No. 150, No. 29 of 1984, sched. 1 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 72	Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 73	Amended by 25 Geo. V No. 78, S.R. 1977, No. 150, No. 29 of 1984, sched. 1 Repealed by No. 14 of 1993, s. 19 Inserted by No. 14 of 2019, s. 10
Section 74	Amended by 25 Geo. V No. 60, s. 2 Repealed by No. 54 of 2000, Sched. 4 Inserted by No. 14 of 2019, s. 10
Section 75	Amended by 25 Geo. V No. 60, s. 2, No. 99 of 1982, sched. 2

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Provision affected	How affected
	Subsection (5) substituted by No. 29 of 1984, s. 3 and Sched. 1
	Amended by No. 29 of 1984, s. 3 and Sched. 1
	Repealed by No. 54 of 2000, Sched. 4
	Amended by No. 86 of 2000, Sched. 1
	Inserted by No. 14 of 2019, s. 10
Section 76	Amended by 25 Geo. V No. 60, s. 2, S.R. 1977, No. 150, No. 99 of 1982, sched. 2
	Subsection (4) substituted by No. 29 of 1984, s. 3 and Sched. 1
	Repealed by No. 54 of 2000, Sched. 4
	Amended by No. 86 of 2000, Sched. 1
	Inserted by No. 14 of 2019, s. 10
Section 77	Amended by S.R. 1977, No. 150, No. 29 of 1984, s. 3 and Sched. 1
	Repealed by No. 54 of 2000, Sched. 4
	Inserted by No. 14 of 2019, s. 10
Section 78	Repealed by No. 54 of 2000, Sched. 4
	Inserted by No. 14 of 2019, s. 10
Section 79	Amended by 25 Geo. V No. 60, s. 2, S.R. 1977, No. 150
	Repealed by No. 54 of 2000, Sched. 4
	Inserted by No. 14 of 2019, s. 10
Section 80	Amended by 25 Geo. V No. 60, s. 2, S.R. 1977, No. 150, No. 29 of 1984, s. 3 and Sched. 1
	Repealed by No. 54 of 2000, Sched. 4
	Inserted by No. 14 of 2019, s. 10
Section 81	Repealed by No. 54 of 2000, Sched. 4
	Inserted by No. 14 of 2019, s. 10
Section 82	Repealed by No. 54 of 2000, Sched. 4
	Inserted by No. 14 of 2019, s. 10
Section 83	Amended by No. 29 of 1959, s. 2 and Sched. 1, 25 Geo. V No. 60, s. 2, 25 Geo. V No. 78, No. 66 of 1962, s. 3 and Sched. 1, S.R. 1977, No. 150, No. 9 of 1982, s. 7 and Sched. 10
	Repealed by No. 54 of 2000, Sched. 4
	Amended by No. 42 of 2001, Sched. 1
	Inserted by No. 14 of 2019, s. 10
Division 3 of Part VII	Inserted by No. 14 of 2019, s. 10
Section 84	Amended by No. 36 of 1958, s. 4 and Sched. 3, S.R. 1977, No. 150
	Repealed by No. 54 of 2000, Sched. 4
	Inserted by No. 14 of 2019, s. 10
Section 85	Amended by No. 29 of 1959, s. 2 and Sched. 1, 25 Geo. V No. 60, s. 2, 25 Geo. V No. 78, No. 66 of 1962, s. 3 and Sched. 1, No. 9 of 1982, s. 7 and Sched. 10, No. 29 of 1984, s. 3 and Sched. 1, No. 20 of 1990, s. 11
	Repealed by No. 54 of 2000, Sched. 4

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Provision affected	How affected
	Amended by No. 42 of 2001, Sched. 1
	Inserted by No. 14 of 2019, s. 10
Division 4 of Part VII	Inserted by No. 14 of 2019, s. 10
Section 86	Amended by 25 Geo. V No. 60, s. 2, No. 68 of 1994, s. 3 and Sched. 1
	Repealed by No. 54 of 2000, Sched. 4
	Inserted by No. 14 of 2019, s. 10
Section 87	Repealed by No. 63 of 1963, s. 2 and Sched. 1
	Inserted by No. 14 of 2019, s. 10
Section 88	Repealed by No. 63 of 1963, s. 2 and Sched. 1
	Inserted by No. 14 of 2019, s. 10
Division 5 of Part VII	Inserted by No. 14 of 2019, s. 10
Section 89	Repealed by No. 63 of 1963, s. 2 and Sched. 1
	Inserted by No. 14 of 2019, s. 10
Division 6 of Part VII	Inserted by No. 14 of 2019, s. 10
Section 89A	Inserted by No. 14 of 2019, s. 10
Section 89B	Inserted by No. 14 of 2019, s. 10
Section 89C	Inserted by No. 14 of 2019, s. 10
Section 89D	Inserted by No. 14 of 2019, s. 10
Section 91	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 92	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 93	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 94	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 95	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 96	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 97	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 98	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 99	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 100	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 101	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 102	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 103	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 104	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 105	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 106	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 107	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 108	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 109	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 110	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 111	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 112	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 113	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 114	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 115	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 116	Repealed by No. 63 of 1963, s. 2 and Sched. 1

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Section 117	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 118	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 119	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 120	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 121	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 122	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 123	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 124	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 125	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 126	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 127	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 128	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 129	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 130	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 131	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 132	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 133	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 134	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 135	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 136	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 137	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 138	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 139	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 140	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 141	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 142	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 143	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 144	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 145	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 146	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 147	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 148	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 149	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 150	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 151	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 152	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 153	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 154	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 155	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 156	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 157	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 158	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 159	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 160	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 161	Repealed by No. 63 of 1963, s. 2 and Sched. 1
Section 165	Amended by 25 Geo. V No. 78, No. 55 of 1965, s. 3 and Sched. 1 and S.R. 1977, No. 150
Section 166	Amended by S.R. 1977, No. 150

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Provision affected	How affected
Section 168	Amended by 25 Geo. V No. 78
Section 170	Amended by 25 Geo. V No. 78
Section 183	Amended by 25 Geo. V No. 60, s. 2
Section 184	Amended by 25 Geo. V No. 78
Part XII	Amended by No. 40 of 1959, s. 3
Section 186	Amended by No. 40 of 1959, s. 4 and No. 13 of 2012, s. 58
Section 188	Amended by S.R. 1977, No. 150
Section 191A	Inserted by No. 40 of 1959, s. 5 Amended by No. 30 of 2004, s. 7, No. 55 of 2007, Sched. 1 Repealed by No. 13 of 2012, s. 59
Section 191B	Inserted by No. 40 of 1959, s. 5 Amended by No. 30 of 2004, s. 8, No. 55 of 2007, Sched. 1 and No. 13 of 2012, s. 60
Section 193	Amended by No. 40 of 1959, s. 6, 25 Geo. V No. 60, s. 2 and No. 55 of 2007, Sched. 1
Section 194	Substituted by No. 4 of 1963, s. 3 Amended by No. 92 of 1974, s. 6 and Sched. 1
Section 194A	Inserted by No. 4 of 1963, s. 3 Amended by No. 92 of 1974, s. 6 and Sched. 1
Section 194B	Inserted by No. 4 of 1963, s. 3 Amended by No. 92 of 1974, s. 6 and Sched. 1, No. 68 of 1994, s. 3 and Sched. 1 and No. 4 of 2017, Sched. 1
Section 194C	Inserted by No. 4 of 1963, s. 3 Amended by No. 92 of 1974, s. 6 and Sched. 1, No. 62 of 1996, s. 3 and Sched. 1 and No. 74 of 1999, Sched. 2
Section 194D	Inserted by No. 4 of 1963, s. 3
Section 194E	Inserted by No. 4 of 1963, s. 3 Amended by No. 92 of 1974, s. 6 and Sched. 1
Section 194F	Inserted by No. 4 of 1963, s. 3 Amended by No. 92 of 1974, s. 6 and Sched. 1 and No. 4 of 2017, Sched. 1
Section 194G	Inserted by No. 65 of 1994, s. 3
Section 194H	Inserted by No. 61 of 1999, Sched. 1
Section 195	Amended by S.R. 1977, No. 150 and No. 14 of 2019, s. 11
Section 196	Amended by S.R. 1977, No. 150
Section 197	Amended by No. 40 of 1959, s. 7, No. 4 of 1963, s. 4 and s. 6, No. 6 of 1971, s. 4, No. 50 of 1977, s. 7, S.R. 1977, No. 150, No. 91 of 1986, s. 64, No. 54 of 2000, Sched. 4, No. 30 of 2004, s. 9, No. 6 of 2005, s. 44, No. 16 of 2006, s. 41, No. 55 of 2007, Sched. 1, No. 76 of 2009, s. 38, No. 13 of 2012, s. 61 and No. 14 of 2019, s. 12
Section 198	Amended by 25 Geo. V No. 78 and S.R. 1977, No. 150
Section 200	Amended by 25 Geo. V No. 60, s. 2, 25 Geo. V No. 78 and No. 68 of 1994, s. 3 and Sched. 1
Section 202	Amended by No. 31 of 1958, s. 3, No. 4 of 1963, s. 5, No. 50 of 1977, s. 8 and No. 55 of 2007, Sched. 1
Section 203	Amended by No. 50 of 1977, s. 9
Schedule I	Amended by 25 Geo. V No. 51, s.5 and No. 50 of 1977, s.8

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Provision affected	How affected
Schedule II	Repealed by No. 31 of 1958, s. 4