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QUEENSLAND

**THE SUPREME COURT ACTS AMENDMENT ACT
OF 1958 (No. 2) 7 Eliz. 2 No. 13**

[Reprinted as at 1 May, 1983]

An Act to Amend "The Supreme Court Acts, 1861 to 1958," in certain particulars

[Assented to 28 April, 1958]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled and by the authority of the same, as follows:—

1. (1) Short title and construction. This Act may be cited as "*The Supreme Court Acts Amendment Act of 1958 (No. 2)*," and shall be read as one with "*The Supreme Court Acts, 1861 to 1958*."

(2) Collective title. "*The Supreme Court Acts, 1861 to 1958*," and this Act may be collectively cited as "*The Supreme Court Acts, 1861 to 1958*."

2. Operation of Act. This Act applies to causes and matters, including appeals, the hearing whereof by the Full Court or the Court of Criminal Appeal, and to causes and matters, including appeals, the hearing whereof by a Judge, was commenced before the date of the passing of this Act as well as to causes and matters, including appeals, the hearing whereof by the Full Court or the Court of Criminal Appeal, and to causes and matters, including appeals, the hearing whereof by a Judge, is commenced on or after that date.

3. Saving. This Act shall apply so as not to limit or affect howsoever the operation and effect of section nine of "*The Supreme Court Act of 1892*," or of sections six hundred and twenty-seven, six hundred and sixty, six hundred and sixty-one, and 671F of "*The Criminal Code*."

4. Constitution of the Full Court or Court of Criminal Appeal when one Judge unable to continue. (1) When after the commencement of the hearing of any cause or matter, including any appeal, before the Full Court or the Court of Criminal Appeal, but before judgment in the cause or matter has been given, one of the Judges by and before whom the Court is or was constituted dies or becomes incapable of continuing to sit or, in the case of a cause or matter which has been heard but judgment wherein has not been given, of giving his judgment, the remaining Judges by and before whom the Court is or was holden, may, if they think fit, on the application of any party to the cause or matter

give (subject to subsection two or, as the case requires, subsection three of this section) judgment in the cause or matter and, if necessary for the purpose of so doing, complete the hearing.

(2) Where the remaining Judges number two and are agreed in opinion as to the decision to be given, they shall give judgment in accordance with that opinion, and may make such order as to costs and otherwise as could be made by the Court in the cause or matter, and such judgment and order shall be deemed and shall have full force and effect as the judgment of the Court in the cause or matter.

(3) Where the remaining Judges number more than two, and three or a majority (whichever is the greater in number) of them are agreed in opinion as to the decision to be given, judgment shall be given in accordance with that opinion, and the remaining Judges, or the aforesaid number of them, may make such order as to costs and otherwise as could be made by the Court in the cause or matter, and such judgment and order shall be deemed and shall have full force and effect as the judgment of the Court in the cause or matter.

(4) Where the remaining Judges refuse the application of a party to give judgment pursuant to this section, or they are divided in opinion so as to be unable to give judgment pursuant to this section, the remaining Judges—

- (a) (If this section is applicable in the cause or matter by reason of the temporary incapacity of a Judge) may, according as they deem fit, either adjourn the cause or matter as they deem necessary in order to enable all of the Judges to give judgment and, if necessary for that purpose, the hearing to be completed, or order the cause or matter to be heard and determined de novo; and
- (b) In any other case shall order the cause or matter to be heard and determined de novo.

(5) When a cause or matter is heard and determined de novo by the Full Court,—

- (a) The Full Court may make such order as to the costs of the first hearing as the Court shall think fit; and
- (b) The first hearing shall for all purposes, other than that set out in paragraph (a) of this subsection, be deemed a nullity.

5. Hearing de novo when trial Judge unable to continue. (1) When after the commencement of the hearing of any cause or matter, civil or criminal, including any appeal before a Judge, but before judgment in the cause or matter has been given, the Judge dies or becomes incapable of continuing to sit or, in the case of a cause or matter which has been heard but judgment wherein has not been given, of giving his judgment, any party to the cause or matter may, upon giving seven days' notice to the other party or parties, apply to a Judge for an order that the cause or matter be heard and determined de novo.

- (2) On an application under this section to a Judge, that Judge—
- (a) (If this section is applicable in the cause or matter by reason of the temporary incapacity of a Judge) may, according as he deems fit, either adjourn the cause or matter as he deems necessary in order to enable the Judge before whom the hearing thereof was commenced to give judgment and, if necessary for that purpose, to complete the hearing, or order the cause or matter to be heard and determined de novo; and
 - (b) In any other case shall order the cause or matter to be heard and determined de novo.
- (3) When, pursuant to this section, a cause or matter is heard and determined de novo—
- (a) The Judge so hearing and determining the same may make such order as to the costs of the first hearing as he shall think fit; and
 - (b) The first hearing shall for all purposes, other than that set out in paragraph (a) of this subsection, be deemed a nullity.

6. Proof of incapacity of Judge. When proof of the temporary or permanent incapacity of a Judge is necessary for a purpose of this Act, the certificate of the Chief Justice or in his absence that of the next senior Judge that such Judge is incapable as specified in the certificate shall be prima facie evidence of that fact.