



Australian Capital Territory

# **Supreme Court Act 1933    No 34**

## **Republication No 9**

Republication date: 1 July 2002

Last amendment made by Act 2001 No 88

Amendments incorporated to 1 July 2002

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Supreme Court Act 1933* as in force on 1 July 2002. It includes any amendment, repeal or expiry affecting the republished law to 1 July 2002 and any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
1 July 2002



Australian Capital Territory

# Supreme Court Act 1933

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Amendments incorporated to  
1 July 2002



Australian Capital Territory

## Supreme Court Act 1933

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An Act to establish a Supreme Court of the Australian Capital Territory,  
and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Supreme Court Act 1933*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary defines certain words and expressions, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act.

For example, the signpost definition ‘*entitlements*, for part 2B (Terms and conditions of judges)—see section 37T.’ means that the expression *entitlements* is defined in section 37T, and the definition applies to part 2B.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156).

### 2A Notes

A note included in this Act is explanatory and is not part of the Act.

*Note* See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

## Part 2                      Constitution and jurisdiction    of the Supreme Court

### 3        Establishment

- (1) There shall be a Supreme Court of the Territory which shall be known as the Supreme Court of the Australian Capital Territory.
- (2) The court shall be a superior court of record.
- (3) The court shall consist of the Chief Justice and the other judges.

### 4        Resident judges

- (1) The Executive may by commission appoint, as resident judges, a Chief Justice of the court and other judges of the court.
- (2) A person is not eligible to be appointed as a resident judge—
  - (a) unless he or she—
    - (i) is or has been a judge of a superior court of record of the Commonwealth or a State, or has been a judge of the Supreme Court; or
    - (ii) has been a legal practitioner for not less than 5 years; or
  - (b) if he or she has attained the age of 70 years.
- (3) A resident judge ceases to hold office on attaining the age of 70 years.
- (4) A resident judge may resign by written notice to the Attorney-General.

### 4A     Additional judges

- (1) The Executive may, by commission, appoint a judge or judges of a superior court of record of the Commonwealth or a State as an additional judge or additional judges of the court.

- (2) An additional judge ceases to hold office on ceasing to hold office as a judge (other than as an additional judge) of a superior court of record of the Commonwealth or a State.
- (3) An additional judge may resign by written notice to the Attorney-General.

#### **4B Acting judges**

- (1) The Executive may, by commission, appoint persons to be acting judges of the court.
- (2) An appointment under subsection (1) shall be for the period, not longer than 12 months, specified in the commission.
- (3) A person is not eligible to be appointed under subsection (1) unless he or she—
  - (a) has been a judge of a superior court of record of the Commonwealth or a State, or has been a judge of the Supreme Court; or
  - (b) has been a legal practitioner for not less than 5 years.

#### **5 Seniority of judges**

- (1) The Chief Justice is the senior judge of the court.
- (2) The President is senior to all the other judges except the Chief Justice.
- (3) The resident judges are senior to the additional judges and the acting judges.
- (4) The additional judges are senior to the acting judges.
- (5) The resident judges (other than the Chief Justice or the President) have seniority as between themselves—
  - (a) according to the dates their respective commissions took effect; or

- (b) if the commissions of 2 or more of them took effect on the same date—according to the precedence assigned to them by their respective commissions.
- (6) The additional judges have seniority as between themselves—
  - (a) according to the dates their respective commissions took effect; or
  - (b) if the commissions of 2 or more of them took effect on the same date—according to the precedence assigned to them by their respective commissions.
- (7) The acting judges have seniority as between themselves—
  - (a) according to the dates their respective commissions took effect; or
  - (b) if the commissions of 2 or more of them took effect on the same date—according to the precedence assigned to them by their respective commissions.

## **6 Acting Chief Justice**

Whenever—

- (a) the Chief Justice is absent from Australia or from duty; or
- (b) there is a vacancy in the office of Chief Justice;

the next senior judge who is in Australia and is able and willing to do so is to act as Chief Justice.

## **7 Arrangement of business of court**

Subject to section 37G (Arrangement of business of Court of Appeal), 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 to 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 particular matters or classes of matters.

**8 Exercise of jurisdiction**

- (1) The jurisdiction of the court is exercisable by a single judge, except—
  - (a) when exercised by the master under the rules (see section 9); or
  - (b) when exercised by the registrar under the rules (see section 10); or
  - (c) when exercised by a Full Court under section 11 or 13; or
  - (d) when exercised by the Court of Appeal under part 2A.
- (2) The rules of court may provide for the jurisdiction of the court otherwise exercisable by a single judge to be exercised—
  - (a) by the master, in the cases and subject to the conditions prescribed under the rules; or
  - (b) by the registrar, in the cases and subject to the conditions prescribed under the rules.
- (3) In this section:  
*registrar* does not include a deputy registrar.

**9 Exercise of jurisdiction by master**

- (1) For the purposes of the exercise of jurisdiction conferred on the master by rules of court, this Act has effect, subject to this section, as if the court consisted of the judges and the master.
- (2) A person who is dissatisfied with a judgment of the master made in the exercise of jurisdiction conferred by rules of court may appeal, as prescribed by the rules of court—
  - (a) for an interlocutory judgment—to the court constituted by a single judge; and
  - (b) in the case of any other judgment—to the Court of Appeal.
- (3) On an appeal under subsection (2)(a), the court—

- (a) shall have regard to the evidence given in the proceedings out of which the appeal arose; and
- (b) has power—
  - (i) to draw inferences of fact; and
  - (ii) in its discretion, to receive further evidence, which evidence may be taken—
    - (A) on affidavit; or
    - (B) by oral examination before the court or a judge; or
    - (C) otherwise under section 57.
- (4) On an appeal under subsection (2) (a), the court may confirm, vary or set aside the judgment of the master and may make any order that in all the circumstances it considers just.

## **10 Exercise of jurisdiction by registrar**

- (1) For the purposes of the exercise of jurisdiction conferred on the registrar by rules of court, this Act has effect, subject to this section, as if the court consisted of the judges and the registrar.
- (2) A person who is dissatisfied with an order of the registrar made in the exercise of jurisdiction conferred by rules of court may appeal, as prescribed by the rules of court, to the court constituted by a single judge.
- (3) On an appeal under subsection (2), the court may confirm, vary or set aside the order of the registrar and may make any order that in all the circumstances it considers just.

## **11 Exercise of jurisdiction—legal practitioners**

- (1) The jurisdiction of the court in an application for admission as a legal practitioner of the court shall be exercised by a Full Court unless the Chief Justice directs otherwise.

- (2) The jurisdiction of the court in proceedings relating to the issue, suspension or cancellation of a practising certificate under the *Legal Practitioners Act 1970* shall be exercised by a Full Court.
- (3) The jurisdiction of the court in proceedings under the *Legal Practitioners Act 1970*, division 8.6 shall, as regards—
- (a) a finding whether the conduct of a legal practitioner has been such as to justify it making an order under that Act, section 67 (1) or exercising a power under that Act, section 67 (2); or
  - (b) making such an order or exercising such a power in relation to a legal practitioner;
- be exercised by a Full Court.
- (4) Nothing in this section prevents a single judge, in proceedings referred to in subsection (2) or (3), from—
- (a) making any findings of fact; or
  - (b) giving directions of an interlocutory kind.
- (5) A single judge who has heard any part of proceedings referred to in subsection (3) for the purpose of making any findings of fact may be 1 of the judges who exercise the jurisdiction of the court in those proceedings under that subsection.

### **13 Power of judge to order that jurisdiction in a matter be exercised by Full Court**

- (1) This section applies in relation to matters in which, apart from this section, the jurisdiction of the court would be exercisable by a single judge.
- (2) At any time before the beginning of the hearing of a matter in relation to which this section applies, a judge may order that the jurisdiction of the court in that matter shall be exercised by the Full Court.
- (3) At any time after the beginning of the hearing of a matter in relation to which this section applies, the judge hearing the matter may order



that the jurisdiction of the court in that matter shall be exercised by the Full Court.

- (4) Where an order has been made under subsection (2) or (3) in relation to a matter—
- (a) the jurisdiction of the court in that matter shall, subject to the rules of court, be exercised by the Full Court; and
  - (c) the court may give such directions as it thinks proper as to the procedure to be followed in the further conduct of the proceedings, including, in a case where evidence was received before the making of the order, directions as to the use (if any) to be made of that evidence.

#### **14 Full Court decisions—equal division of opinion**

If the Full Court is divided in opinion as to the decision to be given on any question, the question shall be decided according to the opinion of the majority, if there is a majority, but if the judges are equally divided in opinion—

- (a) if a judgment of the master is called in question—the judgment is confirmed; and
- (b) in any other case—the opinion of the senior judge sitting prevails.

#### **15 Exercise by court of powers of master**

- (1) If the jurisdiction of the court is to be, or is being, exercised in a particular case by the master—
- (a) the master may, on the master's own initiative or on the application of a party to the proceedings, refer the proceedings to the court constituted by a single judge; and
  - (b) a judge may, on the application of a party to the proceedings, at any time before the conclusion of the proceedings before the master, order that the jurisdiction of the court in the case be exercised by the court constituted by a single judge.

- (2) If, under subsection (1), proceedings are referred or removed to the court constituted by a single judge, the court may—
- (a) give any directions it considers appropriate as to the procedure to be followed in the further conduct of the proceedings, including, if evidence was recorded before the referral or removal, directions as to the use (if any) to be made of the evidence; and
  - (b) remit the proceedings to the master with any directions the court considers appropriate.

## **16 Holding other judicial offices**

- (1) Subject to this section, a judge may also hold office as a judge of a superior court of record of the Commonwealth, a State or another Territory, whether appointed to that office before or after his or her appointment as a judge of the Supreme Court.
- (2) A resident judge or acting judge is not, without the written approval of the Executive, entitled to—
- (a) engage in remunerative employment otherwise than in connection with the duties of judicial office or any office, appointment or commission held by him or her in the Defence Force of the Commonwealth; or
  - (b) accept appointment to another judicial office or to an office under a law of the Territory, the Commonwealth, a State or another Territory.
- (3) The Executive shall consult with the Chief Justice before giving the approval.

## **18 Principal seat of court and sittings**

- (1) The court may sit at Canberra, and at any other places in Australia that are from time to time determined by the Chief Justice.
- (2) The times of the sittings of the court shall be such as are from time to time specified by rules of court.

- (3) The offices of the court shall be at Canberra.

### **19 Oath or affirmation of office—judges**

Before proceeding to perform the functions of office, a judge shall take or make—

- (a) an oath or affirmation in accordance with the schedule, part 1;  
or

- (b) an oath or affirmation in accordance with the schedule, part 2;

before another judge, a justice of the High Court or a judge of the Federal Court.

### **20 Jurisdiction and powers of Supreme Court**

- (1) The court has the following jurisdiction:

- (a) all original and appellate jurisdiction that is necessary to administer justice in the Territory;

- (b) jurisdiction conferred by a Commonwealth Act or a law of the Territory.

- (2) Unless it is required to do so by or under a Commonwealth Act or a law of the Territory, the court is not bound to exercise its powers if it has concurrent jurisdiction with another court or tribunal.

### **21 Distinction between court and chambers**

- (1) The distinction between court and chambers is abolished.

- (2) The business of the court, whether conducted in a courtroom or otherwise, shall be taken to be conducted in court.

- (3) Nothing in this section affects the practice and procedure of the court with respect to the business of the court that may be conducted in chambers or elsewhere other than in a courtroom.

**22 Trial by jury in civil proceedings**

- (1) In every suit in the court, unless the court otherwise orders, the trial shall be by the court without a jury.
- (2) The court may, if it appears just, order specially that any action or any issue of fact in any suit shall be tried before the court with a jury.
- (3) The court may not make an order under this section in an action for libel or slander.

**23 Costs**

- (1) The court shall have jurisdiction to award costs in all matters brought before the court, including matters dismissed for want of jurisdiction.
- (2) Subject to any other law of the Territory (including rules of court), the court may determine—
  - (a) the amount of costs of and incidental to proceedings in the court, including the administration of an estate or trust; and
  - (b) by whom and to what extent such costs are to be paid.
- (3) Nothing in this section shall alter the practice that would otherwise be followed in any criminal cause or matter or in proceedings on the Crown side of the court.

**24 Service of writs out of the jurisdiction of the court**

Writs of summons issued out of the court and notices of such writs may be served out of the jurisdiction of the court in the manner and to the extent provided by the rules of court.

**25 Law and equity to be concurrently administered**

Subject to the express provisions of any other Act, in every civil cause or matter begun in the court law and equity shall be administered according to sections 26 to 32.

**26 Equities of plaintiff**

In proceedings in the court, the plaintiff is entitled to equitable relief if, in pre-Judicature Act proceedings of the same type, the plaintiff would have been entitled to such relief.

**27 Equities of defendant**

In proceedings in the court, the defendant is entitled to rely on an equitable defence, or is entitled to equitable relief of any sort, against any claim (whether at law or in equity) if, in pre-Judicature Act proceedings of the same type, the defendant would have been entitled to rely on such a defence, or would have been entitled to such relief, as the case may be.

**28 Counterclaims and third parties**

- (1) In proceedings in the court, the defendant is entitled to relief (whether at law or in equity)—
  - (a) against the plaintiff, if the relief claimed would have been granted to the defendant if he or she had taken out a separate suit against the plaintiff; or
  - (b) against a person other than the plaintiff, if—
    - (i) the relief claimed relates to the subject matter of the proceedings; and
    - (ii) that person is duly served with written notice of the claim; and
    - (iii) the claim would have been granted to the defendant if he or she had taken out a separate suit against that person.
- (2) If a person is duly served with a notice referred to in subsection (1) (b) (ii), he or she is to be taken to be a party to the relevant proceedings with the same rights as if the defendant had instituted a separate suit against the person.

**29 Incidental equities**

In proceedings in the court, the parties are entitled to such incidental equitable rights, and subject to such incidental equitable duties, as they would have been entitled or subject to in pre-Judicature Act proceedings of the same type.

**30 Defence or stay of proceedings instead of prohibition or injunction**

- (1) No proceedings at any time pending in the court shall be restrained by prohibition or injunction.
- (2) A defence is available in proceedings if, in pre-Judicature Act proceedings of the same type, an injunction would previously have been available.
- (3) Nothing in this Act prevents the court from directing a stay in any proceedings pending before it.
- (4) On the motion of any entitled person, the court may grant a stay in any proceedings pending before it.
- (5) The court may grant a stay of proceedings under subsection (4)—
  - (a) generally or in relation to part only of the proceedings; and
  - (b) subject to such other conditions as the court thinks just.
- (6) In this section:

*entitled person*, in relation to proceedings referred to in subsection (4), means a person (whether or not he or she is a party to the proceedings) who would have been entitled, in connection with pre-Judicature Act proceedings of the same type—

- (a) to apply to a court to restrain the prosecution of the proceedings; or
- (b) to enforce, by attachment or otherwise, any judgment, decree, rule or order in contravention of which all or a part of the proceedings have or has been taken.

**31 Common law and statute**

The court shall give effect to all claims for relief arising under the common law or the statute law of the Territory, subject to any equitable rules applicable under this Act.

**32 Final determination of matters**

- (1) In the exercise of its jurisdiction under this Act in relation to proceedings in the court, the court shall, so far as practicable, ensure that—
  - (a) all the matters in issue between the parties to the proceedings are finally determined; and
  - (b) all multiplicity of legal proceedings concerning those matters is avoided.
- (2) For subsection (1), the court may grant legal or equitable relief absolutely or conditionally.

**33 Law and equity**

Subject to this Act, in any matter arising in the court, if there is a conflict between the rules of equity and the rules of law with reference to that matter, the rules of equity prevail.

**34 Injunctions**

- (1) At any stage of proceedings, the court may grant an injunction (interlocutory or otherwise) on such terms as the court thinks fit if it appears to the court to be just to do so.
- (2) Without limiting subsection (1), the court may grant an injunction to restrain any threatened or apprehended waste, trespass, breach of contract or other injury.
- (3) Subsection (2) applies in relation to a threatened waste or trespass to land whether or not—

- (a) the person against whom the injunction is sought claims any title to the land; or
- (b) that person is in possession of the land; or
- (c) the estates claimed by both or either of the parties are legal or equitable.

**34A Receivers**

At any stage of proceedings, the court may, by interlocutory order on such terms as the court thinks fit, appoint a receiver if it appears to the court to be just to do so.

**34B Prerogative remedies**

- (1) The court has power to grant any relief or remedy by way of a writ of habeas corpus, mandamus, prohibition, certiorari or a writ of any other kind.
- (2) In proceedings in the court for any relief or remedy of a kind referred to in subsection (1), the court may, if it thinks fit, instead of directing the issue of the relevant writ, grant the relief or remedy sought by making an order to the like effect.

**35 Rules of practice and procedure—judicial discretion**

In proceedings, where no provision about a matter of practice or procedure of the court is made under this or any other law of the Territory, the court may give such directions as to practice and procedure as it thinks fit.

**36 Rules of court**

- (1) The resident judges or any 2 of the resident judges may make rules of court, not inconsistent with this or any other Act, with regulations under this Act or any other law of the Territory—
  - (a) for regulating and prescribing—



- (i) the practice and procedure, including the method of pleading, to be followed in the court and in the offices of the court; and
    - (ii) all matters and things incidental to or relating to any such practice and procedure or necessary or convenient to be prescribed for the conduct of any business of the court; and
  - (b) for prescribing any matter or thing that is, by or under the Corporations Law, required or permitted to be prescribed by regulation under that law; and
  - (ba) for prescribing anything that is, under the *Administration and Probate Act 1929*, required or permitted to be prescribed for carrying out or giving effect to that Act; and
  - (c) for prescribing the qualifications for the admission of persons as legal practitioners of the court; and
  - (d) for prescribing any matter or thing that is, by this Act, by any other Act or by any ordinance, required or permitted to be prescribed by rules of court.
- (2) In particular the rules of court may provide—
- (a) for the places of sitting of the court; and
  - (b) for the service and execution of the process of the court including how and the extent to which the process of the court may be served and executed out of the jurisdiction of the court; and
  - (c) for the execution of the judgments of the court; and
  - (d) for the service and execution in the Territory, in accordance with any treaty or convention to which the Commonwealth is a party, of the process of any court of a State or of another Territory or of any foreign court; and
  - (e) for the issue by the court of letters of request for the service in any foreign country of any process of the court; and

- (f) for regulating any matters relating to the costs of proceedings in the court; and
  - (g) for regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given in any proceedings, or on any application in connection with, or at any state of, any proceedings; and
  - (h) for the time of instituting appeals in the Court of Appeal, and how they are instituted.
- (3) The rules of court may provide for or with respect to—
- (a) the proceedings, or questions or issues of fact or law arising in proceedings, that may be referred by the court to an arbitrator or referee for determination or for inquiry and report; and
  - (b) the appointment of a judge, the master, the registrar or other officer of the court or other person as an arbitrator or referee; and
  - (c) the fees to be paid to an arbitrator or referee; and
  - (d) the persons by whom such a fee, or part of such a fee, is payable; and
  - (e) the consequences of a determination or report by an arbitrator or referee; and
  - (f) how a determination or report may be called in question; and
  - (g) whether or not, or to what extent, a determination or report may be called in question on a matter of fact or law; and
  - (h) the provision of the services of officers of the court and the provision of courtrooms and other facilities for the purpose of a reference to an arbitrator or referee; and
  - (i) any other matters associated with a reference.

**37 Fees and charges—determination**

- (1) The Attorney-General may, in writing, determine fees and charges for any of the following purposes:
- (a) proceedings in the court, and matters incidental to proceedings in the court, including—
    - (i) the admission and enrolment of legal practitioners; and
    - (ii) the service and execution of the process of the court; and
    - (iii) the taxation of costs by officers of the court;
  - (b) facilities and services provided by the court, including the service and execution of the process of any court of the Commonwealth, a State or another Territory, or of any court of a foreign country;
  - (c) the general purposes of this Act.

*Note 1* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees and charges (see pt 6.3).

*Note 2* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and rules (see *Legislation Act 2001*, s 104).

- (2) A determination under subsection (1) may provide for any of the following matters:
- (a) the exemption of persons from liability to pay fees for the service and execution of process or other fees, in whole or in part;
  - (b) exemptions from liability for the payment of fees for the service and execution of process or other fees, in whole or in part, in particular circumstances;
  - (c) the remission or refund of fees or charges by the registrar, in whole or in part, in particular circumstances;
  - (d) the deferral of liability by the registrar for the payment of fees or charges, in whole or in part, in particular circumstances.

- (3) A determination under subsection (1) is a disallowable instrument.

*Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

### **37A Fees and charges—payment**

- (1) A fee or charge determined under section 37 (1) is payable, in advance, in accordance with the determination, subject to this section.
- (2) A fee or charge determined under section 37 (1) is payable on notification from the registrar if it is calculated by reference to expenses actually incurred in performing the function, or in providing the facility or service, for which the fee or charge is payable.

### **37B Fees and charges—remission, refund, deferral, waiver and exemption**

- (1) A fee or charge determined under section 37 (1) may be remitted or refunded, or liability for its payment deferred, in accordance with the determination.
- (2) A fee or charge determined under section 37 (1) is not payable—
- (a) if the person otherwise liable to pay the fee or charge is—
    - (i) exempt from paying the fee or charge under the *Legal Aid Act 1977*, section 93 (1); or
    - (ii) legally assisted under a scheme or service provided or approved by the Attorney-General; or
  - (b) if the registrar waives payment of the fee or charge in whole or in part because he or she considers that it would impose hardship on the person liable to pay the fee or charge—to the extent of the waiver; or
  - (c) for lodging a document, or for the service or execution of process, in relation to proceedings—

- (i) in a criminal matter, including an appeal; or
- (ii) under the *Coroners Act 1997*; or
- (iii) under the *Legal Practitioners Act 1970*, part 8; or
- (iv) under the *Magistrates Court Act 1930*, part 10; or
- (v) under any of the following Acts: or
  - (A) the *Adoption Act 1993*; or
  - (B) the *Children and Young People Act 1999*; or
  - (D) the *Domestic Violence Act 1986*; or
  - (E) the *Guardianship and Management of Property Act 1991*; or
  - (G) the *Mental Health (Treatment and Care) Act 1994*; or
  - (H) the *Testamentary Guardianship Act 1984*; or
- (vi) on appeals in relation to the following matters:
  - (A) a matter under the *Children and Young People Act 1999*;
  - (B) a matter under the *Mental Health (Treatment and Care) Act 1994*;
  - (C) a decision of the Guardianship and Management of Property Tribunal;
- (vii) on a matter that has been remitted to the court by the High Court under the *Judiciary Act 1903*, section 44 (Cwlth); or
- (viii) in relation to which a convention to which Australia is a party provides that a fee is not to be payable; or
- (ix) on an application to the court for an extension of the time within which a proceeding may be begun; or

- (x) on an application referred to in the *Juries Act 1967*, section 24 (10), 26A (2) or 51A (3).

### **37C Fees and charges—recovery if otherwise not payable**

- (1) This section applies in civil proceedings in the court between 2 parties (the *first party* and the *second party*), if—
  - (a) a filing fee, or a fee for the service or execution of process, otherwise payable by the first party is—
    - (i) not payable (in whole or in part) due to the exemption of the first party as referred to in section 37 (2) (a) or (b) or 37B (2) (a); or
    - (ii) remitted or refunded (in whole or in part) under section 37B (1); or
    - (iii) the subject of waiver (in whole or in part) under section 37B (2) (b); and
  - (b) judgment is given or entered in favour of the first party; and
  - (c) the first party's costs are payable by the second party.
- (2) If this section applies, the second party shall pay to the registrar an amount equal to the amount in relation to which the first party was exempted, or the amount of the remission, refund or waiver, as the case requires.

### **37D Fees and charges—review of decisions**

- (1) The following decisions of the registrar are reviewable under this section:
  - (a) a decision referred to in section 37 (2) (c) in relation to the refusal to remit or refund a fee or charge (in whole or in part);
  - (b) a decision referred to in section 37 (2) (d) in relation to the refusal to defer liability for paying a fee or charge (in whole or in part);

- (c) a decision under section 37B (2) (b) in relation to the waiver of payment of a fee or charge (in whole or in part).
- (2) After making a reviewable decision, the registrar shall give a written notice of the decision to the eligible person including a statement to the effect that—
- (a) the person may apply to the registrar for a statement of reasons for the decision; and
- (b) the person may apply to the master or a judge for review of the decision within the review period.
- (3) On written application by the eligible person within 28 days after the person's receipt of a notice under subsection (2), the registrar shall give the person a written statement of reasons for the relevant decision.
- (4) On written application by the eligible person within the review period, the master or a judge may review a reviewable decision.
- (5) On a review under subsection (4), the master or the judge may make any order he or she considers appropriate.
- (6) No fee or charge is payable in relation to an application for review under subsection (4).
- (7) In this section:
- eligible person*, in relation to a reviewable decision, means the person who claims to be entitled to the relevant remission, refund, deferral or waiver.
- review period*, in relation to a reviewable decision, means—
- (a) 28 days after receipt by the eligible person of notice of the decision under subsection (2); or
- (b) if the eligible person applies under subsection (3) for a statement of reasons for the decision—28 days after he or she receives the statement of reasons.

## Part 2A Court of Appeal

### **U** 37E Appellate jurisdiction

(1) When exercising its appellate jurisdiction under this part, the court is to be known as the Court of Appeal.

(2) The following matters may be brought before, and heard by, the Court of Appeal:

(a) appeals in relation to the following judgments:

(i) judgments of the master, except interlocutory judgments (see section 9 (Exercise of jurisdiction by master));

**U** (ii) *other judgments of the court (except judgments of the registrar, the Full Court exercising appellate jurisdiction or the Court of Appeal itself);*

*Note* This provision was uncommenced at republication date.

**U** (b) *appeals under section 37S (Reference appeal following acquittal on indictment);*

*Note* This provision was uncommenced at republication date.

(c) cases stated or questions reserved by the court about any matter in relation to which an appeal may be brought to the Court of Appeal.

(3) However, an appeal may not be brought against a judgment made by the court sitting as the Court of Disputed Elections under the *Electoral Act 1992*, section 252.

**U** (4) *Also, an appeal may be brought against an interlocutory judgment of the court constituted by a single judge only with leave of the Court of Appeal.*

*Note* This provision was uncommenced at republication date.



**37F Appointment of President**

- (1) The Executive may, by commission, appoint a resident judge of the court (including the Chief Justice) as President of the Court of Appeal.
- (2) The President ceases to hold office if he or she ceases to be a resident judge of the court.
- (3) The President may resign as President by written notice to the Attorney-General.

**37G Arrangement of business of Court of Appeal**

- (1) The President is responsible for ensuring the orderly and expeditious discharge of the business of the Court of Appeal, including the making of arrangements for the judge or judges who are to constitute the Court of Appeal in particular matters or classes of matters.
- (2) The President must exercise the functions given under this section subject to such consultation with the Chief Justice (unless the Chief Justice is the President) and the other judges as is appropriate and practicable.

**37H Appeal bench**

- (1) The Court of Appeal is constituted by 3 judges, except under the following provisions:
  - section 37J (Appeal court constituted by single judge)
  - section 37L (Appeal judge unable to continue sitting)
  - section 37O (2) (which provides for the execution of a judgment).
- (2) At least 1 of the judges sitting on the Court of Appeal must be a resident judge, unless the President considers it impracticable for the Court of Appeal to be so constituted.
- (3) A judge must not sit on an appeal from a judgment made by the judge.

**37I Presiding judge**

The presiding judge of the Court of Appeal for the hearing of an appeal is the most senior judge sitting on the appeal.

**37J Appeal court constituted by single judge**

- (1) The Court of Appeal may be constituted by a single judge for hearing and deciding any of the following matters (*incidental matters*) in relation to an appeal:
  - (a) leave or special leave to appeal;
  - (b) extension of time to institute an appeal;
  - (c) leave to amend the grounds of an appeal;
  - (d) amendment or stay of a judgment of the court from which the appeal is brought;
  - (e) suspension of the operation of a judgment to which the appeal relates;
  - (f) joinder or removal of a party;
  - (g) a consent order disposing of the appeal (including an order for costs);
  - (h) directions about the conduct of the appeal (including directions about the use of written submissions and limiting the time for oral argument).
- (2) The rules may provide for incidental matters to be dealt with without an oral hearing, subject to any conditions prescribed under the rules.

**37K Decision-making**

The Court of Appeal must make its decision on an appeal in accordance with the opinion of the majority of the judges sitting on the appeal, unless section 37L (3) applies.

**37L Appeal judge unable to continue sitting**

- (1) If, before a proceeding on an appeal is decided, 1 of the judges becomes unable to continue to sit on the appeal, the proceedings may continue before the appeal court constituted by the 2 remaining judges, if the parties agree.

*Note* If a judge's term of office ends before the proceeding is decided, this section does not apply (unless the judge is removed from office, or is otherwise unable to continue to sit on the appeal). Section 60A provides that, in this circumstance, the judge continues to hold office for the purpose of the proceeding, and may continue to exercise the jurisdiction of the Court of Appeal for that purpose.

- (2) If the parties do not agree to the continuation of the proceeding before the 2 remaining judges, the appeal must be reheard and decided by the Court of Appeal constituted by 3 judges ((including, if practicable, the 2 remaining judges)).
- (3) If the parties agree to the continuation of proceedings before the 2 remaining judges, and the remaining judges are divided in opinion—
  - (a) if they are divided in opinion about the decision on the appeal—the appeal must be reheard and decided by the Court of Appeal constituted by 3 judges (including, if practicable, the 2 remaining judges); or
  - (b) if they are divided in opinion about any other issue—the decision of the court is the decision of the most senior of the remaining judges.

**37M Reserved judgments**

- (1) If judgment is reserved in a proceeding before the Court of Appeal after a full hearing, the judgment of the court (including the judgment of 1 or more of the judges sitting on the court) may later be delivered, orally or in writing, by any of the sitting judges.
- (2) It is not necessary for the other judges sitting on the Court of Appeal in the proceeding to be present when judgment is delivered.

**37N Evidence on appeal**

- (1) The Court of Appeal must have regard to the evidence given in the proceeding out of which the appeal arose.
- (2) The Court of Appeal may draw inferences of fact from that evidence.
- (3) The Court of Appeal may receive further evidence in any of the following ways:
  - (a) by oral examination before the court or a judge;
  - (b) on affidavit;
  - (c) by audiovisual link or audio link within the meaning of the *Evidence (Miscellaneous Provisions) Act 1991*, section 14;
  - (d) any other way the court may receive evidence.

**37O Judgment on appeal**

- (1) The Court of Appeal has the following powers in relation to the judgment appealed from:
  - (a) to confirm, reverse or vary the judgment;
  - (b) to give any judgment it considers appropriate, or refuse to give an order applied for;
  - (c) to set aside the judgment (completely or in part) and remit the proceeding to the court constituted by a single judge for further hearing and decision, subject to any directions the Court of Appeal considers appropriate;
  - (d) to set aside a verdict or finding of a jury in a civil proceeding, and enter judgment despite any jury verdict or finding;
  - (e) to set aside the verdict and judgment in a trial on indictment and order a verdict of not guilty (or another verdict) to be entered;

- (f) to order a new trial, with or without jury, on any appropriate ground;
  - (g) to award execution of any judgment, or remit the proceeding to the court constituted by a single judge for execution of the judgment.
- (2) If a judgment of the Court of Appeal is remitted for execution under subsection (1) (g), the court constituted by a single judge must execute the judgment of the Court of Appeal as if it were that judge's own judgment.
- (3) The Court of Appeal may exercise powers under subsection (1) in relation to the decision appealed from—
- (a) despite any request in the notice of appeal that part only of the decision be reversed or varied; and
  - (b) in favour of all or any of the respondents or other parties, including any who have not appealed from or complained of the decision.
- (4) An interlocutory judgment from which there has been no appeal does not prevent the Court of Appeal from giving any decision on the appeal it considers just.
- (5) In a criminal matter, the powers of the Court of Appeal in an appeal against sentence (whether by the prosecution or defendant) include the following powers:
- (a) to increase or decrease the sentence;
  - (b) to substitute a different sentence.

### **37P New trials**

If the Court of Appeal orders a new trial, the court may, by the order, do any or all of the following in relation to the new trial:

- (a) order that the new trial be conducted generally, or on particular issues;

- (b) impose any conditions that it considers appropriate;
- (c) direct any admissions by a party that it considers appropriate;
- (d) order that the testimony of a witness examined at the original trial be used in the new trial in the way stated in the order.

**U** 37Q Bail time on appeal does not count towards prison sentence

**U** 37S Reference appeal following acquittal on indictment

## Part 2B                      Terms and conditions of judges

### 37T    Meaning of *entitlements*

In this part:

*entitlements* means a benefit other than remuneration or allowances.

### 37U    Resident judges

- (1) This section applies to a person (other than a person to whom the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 29A (2) applies) who is appointed as a resident judge, being an appointment made while another resident judge holds office as a judge of the Federal Court.
- (2) A person to whom this section applies shall be entitled to the same remuneration, allowances and entitlements as judges of the Federal Court are entitled to from time to time.
- (3) For subsection (2), the *Judges' Pensions Act 1968* (Cwlth) and the *Judges (Long Leave Payments) Act 1979* (Cwlth) apply in relation to a person to whom this section applies, to the extent to which they are capable of being so applied, as if—
  - (a) those Acts were Territory laws; and
  - (b) the person had been a judge of the Federal Court immediately before he or she retired or died, had been appointed to that court on the date of his or her appointment as a resident judge and had served as a judge of that court for a period equal to the period of the person's service as a resident judge; and
  - (c) a reference to the Attorney-General of the Commonwealth were a reference to the Attorney-General; and

- (d) a reference to the Governor-General of the Commonwealth were a reference to the Executive; and
- (e) a reference to the Constitution, section 72 were a reference to the *Judicial Commissions Act 1994*, section 5; and
- (f) a reference to the Consolidated Revenue Fund were a reference to the public money of the Territory; and
- (g) a reference to the administrative appeals tribunal of the Commonwealth were a reference to the administrative appeals tribunal.

*Note* A reference to a Cwlth Act includes a reference to the Act as originally made and as amended (see *Legislation Act 2001*, s 102).

### **37V Acting judges**

- (1) The remuneration and allowances of an acting judge are as prescribed under the regulations.
- (2) An acting judge shall receive the same entitlements, other than in relation to leave or pension, as a resident judge.

### **37W Dual appointments**

- (1) In this section:  
*superior court office*, in relation to a judge of the court who holds office as a judge of a superior court of record of the Commonwealth, a State or another Territory, means the office of judge of that superior court of record.
- (2) Subject to subsections (3) and (4), a judge is not entitled to remuneration, allowances or entitlements if the judge—
  - (a) concurrently holds a superior court office; and
  - (b) is entitled to remuneration, allowances or entitlements (as the case requires) in relation to the superior court office.
- (3) If the amount of remuneration or allowances to which a judge would be entitled as a judge of the court if subsection (2) did not apply



exceeds the remuneration or allowances (as the case may be) to which he or she is entitled in relation to his or her superior court office, the judge is entitled to receive an additional amount equal to that excess.

- (4) If the entitlements to which a judge would be entitled as a judge of the court if subsection (2) did not apply—
- (a) are of a type not provided for in relation to his or her superior court office; or
  - (b) are of a better quality than those provided for in relation to his or her superior court office;
- the judge is entitled to receive entitlements of that type or quality.
- (5) This section does not apply to an acting judge of the court.

### **37X Accrual and appropriation**

- (1) The remuneration and allowances to which a judge is entitled accrue from day-to-day.
- (2) The public money of the Territory is appropriated to the extent necessary for payment to judges of remuneration and allowances.

## Part 3 The master

### 38 The master

There shall be a Master of the court.

### 39 Powers and duties of master

- (1) The master has power to administer oaths, and may exercise such other powers, and shall perform such duties, as are assigned to the master by or under this Act or any other law of the Territory or by a special order of the court.

### 40 Appointment of master

- (1) The master shall be appointed by the Executive.
- (2) A person shall not be appointed as the master unless the person has been a legal practitioner for not less than 5 years.
- (3) A person who has attained 70 years of age shall not be appointed as the master.

### 41 Term of office

- (1) The master—
  - (a) holds office on and from the day specified in the instrument of appointment; and
  - (b) holds office, subject to this Act—
    - (i) for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for reappointment; or
    - (ii) if the instrument of appointment so provides, until attaining 70 years of age.

- (2) Subsection (1) (b) (i) does not authorise the Executive to appoint the master for a term of office that will expire after he or she attains the age of 70 years.

#### **41A Extension of term of office**

- (1) Before the expiry of the term of office of the master, the Executive may, by instrument, extend the term for a specified period.
- (2) Before the expiry of a term of office of the master which has been extended under subsection (1) or this subsection, the Executive may, by instrument, further extend the term for a specified period.
- (3) This section does not authorise the Executive to extend or to extend further the term of office of the master for a period that will expire after he or she attains the age of 70 years.

#### **41B Terms and conditions not provided for by this Act**

In relation to matters not provided for by this Act, the master holds office on such terms and conditions (if any) as are determined in writing by the Executive.

#### **41C Holding other offices**

- (1) The master is not, without the written approval of the Executive, entitled to—
- (a) engage in remunerative employment otherwise than in connection with the duties of office as a master or any office, appointment or commission held by him or her in the Defence Force of the Commonwealth; or
- (b) accept appointment to another office under a law of the Territory, the Commonwealth, a State or another Territory.
- (2) The Executive shall consult with the Chief Justice before giving the approval.

**42 Oath or affirmation of office—master**

Before proceeding to perform the functions of office, the master shall take or make—

- (a) an oath or affirmation in accordance with the schedule, part 1; or
- (b) an oath or affirmation in accordance with the schedule, part 2; before a judge.

**43 Resignation**

The master may resign by writing signed and delivered to the Attorney-General.

**44 Retirement**

The Executive may, with the consent of the master if he or she is—

- (a) an eligible employee for the *Superannuation Act 1976* (Cwlth); or
- (b) a member of the Superannuation Scheme for the *Superannuation Act 1990* (Cwlth);

retire the master from office on the ground of invalidity.

**45 Acting appointments**

- (1) The Executive may appoint a person who is eligible to be appointed as master to act as the master—
  - (a) during a vacancy in the office of master (whether or not an appointment has previously been made to the office); or
  - (b) during any period when the master is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.
- (2) A person appointed to act as master shall not continue to act for more than 12 months.

- (3) Where—
- (a) a person is acting under subsection (1) (b); and
  - (b) the office of master becomes vacant;
- then, subject to subsection (2), the person may continue to act until the vacancy is filled.
- (4) A person acting as master has all the powers and duties of the master, and the laws of the Territory (including this Act) apply in relation to the person as if the person were the master.
- Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and rules (see *Legislation Act 2001*, s 104).
- (5) The Executive may determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as master.
- (7) Anything done by or in relation to a person purporting to act as master is not invalid because—
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect.

## **Part 4                      Officers**

### **46      Appointment**

- (1) There shall be—
  - (a) a registrar of the court, and such deputy registrars and other officers of the court as are necessary; and
  - (b) a sheriff of the Territory and such deputy sheriffs of the Territory as are necessary.
- (2) The registrar and the sheriff shall be appointed by the Attorney-General.
- (3) The deputy registrars and the other officers referred to in subsection (1) (a) shall be appointed by the registrar.
- (4) The deputy sheriffs shall be appointed by the sheriff.
- (5) A person is not eligible to be appointed under subsection (3) or (4) unless he or she is a public servant.

### **46A    Acting appointments**

- (1) The Attorney-General may appoint—
  - (a) a person to act as the registrar; and
  - (b) a person to act as the sheriff;during—
  - (c) a vacancy in the office of registrar or sheriff, as the case requires; or
  - (d) any period when the registrar or sheriff, as the case requires, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of office.

- (2) A person appointed under subsection (1) shall not continue to act for more than 12 months.
- (3) Anything done by or in relation to a person purporting to act as the registrar or sheriff is not invalid merely because—
  - (a) there was a defect or irregularity in connection with the appointment; or
  - (b) the appointment had ceased to have effect; or
  - (c) the occasion to act had not arisen or had ceased.
- (4) A person appointed under subsection (1) to act as sheriff has the rights, privileges, immunities and liabilities of the sheriff.

#### **46B Staff assisting registrar**

- (1) The staff assisting the registrar shall be employed under the *Public Sector Management Act 1994*.
- (2) The *Public Sector Management Act 1994* applies in relation to the management of the staff assisting the registrar.

#### **47 Functions of registrar and deputy registrars**

- (1) The registrar has power to administer oaths, and may perform such other functions as are assigned to the registrar by or under this Act or any other law of the Territory, or by any special order of the court.
- (2) Subject to this Act and to any directions of the registrar, a deputy registrar may perform the functions of the registrar under this or any other Act or under rules of court.
- (3) The performance of a function by a deputy registrar does not affect the power of the registrar to perform that function.

#### **48 Oath or affirmation of office—registrar**

Before proceeding to perform the functions of office, the registrar shall take or make—

- (a) an oath or affirmation in accordance with the schedule, part 3;  
or
- (b) an oath or affirmation in accordance with the schedule, part 4;  
before a judge.

**49 Proceedings before registrar in relation to winding-up of companies**

- (1) When the court makes an order for the winding-up of a company, the court may direct that subsection (2) applies to the winding-up.
- (2) If the court gives a direction under subsection (1)—
  - (a) all proceedings in relation to the winding-up shall be before the master or the registrar; and
  - (b) the master and the registrar have all the powers of the court in relation to the winding-up; and
  - (c) the master or the registrar may refer to the court any matter in relation to the winding-up that he or she thinks proper to be determined by the court; and
  - (d) an appeal lies to the court from any order, decree or direction of the master or the registrar made or given in relation to the winding-up.
- (3) A deputy registrar shall not perform a function of the registrar under this section.

**50 Functions of sheriff**

The sheriff shall—

- (a) serve or execute any process of the court directed to him or her; and
- (b) make due return to the court of such process; and
- (c) take due charge of any person committed to his or her custody by the court; and



- (d) discharge any such person as directed by the court or as required under a Territory law.

### **51 Deputy sheriffs**

- (1) Subject to the directions of the sheriff, a deputy sheriff may perform the functions of the sheriff under this Act or any other law of the Territory.
- (2) In performing the functions of the sheriff, a deputy sheriff has all the rights, privileges, immunities and liabilities of the sheriff.
- (3) The performance of a function by a deputy sheriff does not affect the power of the sheriff to perform that function.

### **52 Process of court if sheriff or deputy sheriff is interested party**

- (1) If the sheriff or a deputy sheriff is a party to a cause in the court, any process of the court in the cause that would, except for this section, be directed to the sheriff or the deputy (as the case may be) shall be directed to a disinterested person appointed by the court.
- (2) A person appointed under subsection (1) shall—
  - (a) serve or execute a process directed to him or her; and
  - (b) make due return of the process to the court.
- (3) In performing the functions of the sheriff or deputy sheriff, a person appointed under subsection (1) has all the rights, privileges, immunities and liabilities of the sheriff or a deputy sheriff (as the case requires).

### **53 Sheriff's assistants**

- (1) The sheriff may appoint persons who are public servants to assist in the performance of the sheriff's functions.
- (2) An act done by a person so appointed—

- (a) is taken to be done by and under the authority of the sheriff;  
and
  - (b) is as valid and effectual as if done by the sheriff.
- (3) A person so appointed—
- (a) may perform any functions invested in the sheriff; and
  - (b) has the rights, privileges, immunities and liabilities of the sheriff.

**53A Entry, search and seizure—sheriff’s powers**

- (1) This section applies if, in executing a judgment against a judgment debtor—
- (a) the sheriff is refused entry into the judgment debtor’s premises by an occupier of the premises, after having informed, or having made reasonable attempts to inform, the occupier (orally or in writing) about the procedure in relation to the execution of the judgment and the sheriff’s intention to seek an order for entry under this section if entry is refused; or
  - (b) the sheriff—
    - (i) has made reasonable attempts to contact both the judgment debtor and any other occupier of the judgment debtor’s premises to obtain consent to entry of the premises; and
    - (ii) has been unable to make such contact with the judgment debtor or any other occupier of those premises.
- (2) If this section applies, on application by the sheriff the court may issue an order authorising the sheriff, for any purpose connected with executing the judgment, to enter the judgment debtor’s premises using the force that is necessary and reasonable, with the assistance of a police officer or officers if the sheriff considers the assistance to be necessary.

- (3) Without limiting subsection (2), an order under that subsection is sufficient authority for the sheriff—
- (a) to search the judgment debtor's premises for anything that the sheriff is entitled to seize in execution of the judgment; and
  - (b) to seize and remove any such thing.
- (4) The court shall not make an order under subsection (2) authorising entry to a judgment debtor's premises unless satisfied that—
- (a) the judgment debtor resides at the premises; or
  - (b) there is within the premises anything that the sheriff is entitled to seize in execution of the judgment; or
  - (c) the sheriff is entitled to cause the premises to be sold in execution of the judgment.
- (5) No action, suit or proceeding lies against the sheriff in relation to an act done or omitted to be done in good faith in carrying out an order of the court under subsection (2).
- (6) Nothing in this section is to be taken to limit any other power of the sheriff or the court in relation to the execution of a judgment.
- (7) In this section:
- judgment debtor's premises* means premises occupied by the judgment debtor.

## Part 5                      General matters of procedure

### 54      Manner of giving evidence

Except as otherwise provided by this or any other Act, or unless in any suit the parties agree to the contrary, evidence in any matter shall be given orally in open court.

### 55      Evidence by affidavit

- (1) In any proceedings in the court, evidence may be given by affidavit—
  - (a) of the service of any relevant document; or
  - (b) of the signature of a party to the proceedings, or of his or her legal practitioner, to any relevant document.
- (2) On or before the hearing of a civil matter, the court may, for sufficient reason, order that all or a part of the evidence in the matter, being evidence that but for the order would be required to be given orally in open court, may be given by affidavit.
- (3) An order under subsection (2) may be made subject to such conditions as the court thinks just, including the following:
  - (a) that copies of a relevant affidavit be served on any specified party to the matter;
  - (b) that a person whose evidence is given in a relevant affidavit attend the hearing to be available for cross examination.

### 55A    Hearing of bail applications

- (1) Unless the court otherwise directs, where—
  - (a) a person who is in custody is required or entitled to appear, or is required to be brought, before the court for the hearing of an application in relation to bail; and

- (b) an audiovisual link is available between the place where the court is sitting and a place where the person is in custody;  
the proceeding shall be conducted by the audiovisual link.
- (2) The court may at any time vary or revoke a direction made under subsection (1), either on its own initiative or on the application of a party to the proceeding.
- (3) This section does not apply in relation to a person who has not attained the age of 18 years.
- (4) In this section:

*audiovisual link*—see the *Evidence (Miscellaneous Provisions) Act 1991*, section 14.

## **56 Appearance by legal practitioner**

A party in a cause or matter may appear before the court either personally or by a legal practitioner having the right to practise in the court.

## **57 Orders and commissions for examination of witnesses**

The court may, in any suit or civil matter pending in the court, and at any stage of the proceedings—

- (a) order the examination of any person on oath or affirmation, orally or on interrogatories, before the court or before any officer of the court or other person, at any place in Australia; and
- (b) order a commission or letters of request to be issued to take evidence; and
- (c) by the same or any subsequent order, give any necessary directions touching the time, place and manner of any such examinations; and

- (d) empower any party to the suit or civil matter to give in evidence in the suit or matter the testimony so taken on such terms (if any) as the court directs.

### **58 Non-appearance or absence of some defendants**

- (1) When there are several defendants in any cause pending in the court, if any defendant is not served with process and does not voluntarily appear, the court may nevertheless entertain the cause and proceed to hear and determine it between the parties who are properly before the court.
- (1A) The judgment referred to in subsection (1) in a cause does not prejudice a defendant in the cause who is not served with process and does not voluntarily submit to the jurisdiction of the court.
- (2) When, in any suit of which the court has jurisdiction, any defendant is not a resident of, or found within, Australia, and does not voluntarily appear in the suit, the court may nevertheless proceed to exercise its jurisdiction after such notice to the defendant and upon such terms as are prescribed by rules of court.

### **58A Supreme Court trials—evidence of dead or absent persons**

- (1) On the trial before the Supreme Court of a person who has been committed for trial, whether for the offence in relation to which the person was committed for trial or for an offence founded on evidence disclosed in the course of the preliminary examination, it is provided that—
  - (a) a witness whose depositions were taken in the course of the committal proceedings is dead, is so ill as not to be able to travel or give evidence or is absent from Australia; and
  - (b) the depositions of the witness were taken in the presence of the accused person; and
  - (c) the accused person or that person's legal practitioner had full opportunity of cross-examining the witness;

any of the statements in the depositions that would, if the witness who made the depositions had given evidence on the trial have been admissible, are admissible as evidence on the trial.

- (2) In this section, a reference to the depositions of a witness shall be read as a reference—
  - (a) if a record of the depositions was made in accordance with the *Magistrates Court Act 1930*, section 54A (2)—to a transcript of the record certified in accordance with section 255B (2) of that Act; or
  - (b) if the depositions were taken down in writing and signed in accordance with section 54A (3) of that Act—to the depositions as so taken down and signed.

## **59 Amendment of defects**

- (1) The court may at any time, and on such terms as the court thinks just, amend any defect or error in a proceeding in the court.
- (2) An amendment under subsection (1) is to be made for the purpose of determining the real questions in issue in the proceedings.

## **60 Formal defects to be amended**

- (1) No proceedings in the court shall be invalidated by any formal defect or by any irregularity, unless the court is of opinion that substantial injustice has been caused and that the injustice cannot be remedied by an order of the court.
- (2) The court may make an order declaring that any proceeding is valid notwithstanding any such defect or irregularity.

## **60A Completion of part-heard matters—end of term of office**

- (1) This section applies if—
  - (a) a judge or the master would, apart from this section, cease to hold office under this Act; and

- (b) at the time that the judge or master would otherwise have ceased to hold office, proceedings were being heard by him or her (including proceedings in the Full Court or the Court of Appeal) but had not been finally determined.
- (2) If this section applies in relation to a judge or the master, he or she continues to hold office for the purposes of the transitional proceedings.
- (3) If this section applies in relation to a judge or the master, he or she may continue to exercise the jurisdiction of the court for the purposes of hearing and determining transitional proceedings.
- (4) A judgment given or entered in transitional proceedings, or an order (including an order as to costs) made in transitional proceedings, is a valid and effectual exercise of the court's jurisdiction, and may be enforced accordingly.
- (5) This section does not apply if a judge or the master ceases to hold office because of his or her removal from office.
- (6) In this section:
- transitional proceedings* means proceedings referred to in subsection (1) (b).

### **61 Reserved judgments**

- (1) If judgment is reserved in a proceeding before the Full Court after a full hearing, the judgment of the court (including the judgment of 1 or more of the judges sitting on the court) may later be delivered, orally or in writing, by any of the sitting judges.
- (2) It is not necessary for the other judges sitting on the Full Court in the proceeding to be present when judgment is delivered.

### **63 Change of venue**

- (1) At any stage of proceedings on a cause or matter in the court, the court may order that the cause or matter be heard at a specified place within Australia, or continued at another specified place within



Australia, subject to section 18 (1) and to any conditions specified in the order.

- (2) After a cause or matter in the court has been heard at a place, the court may give further hearing or consideration to the cause or matter, or pronounce judgment, at a sitting of the court at another place within Australia, subject to section 18 (1).

#### **64 Seal**

- (1) The court shall have and use as occasion requires a seal, having inscribed the words ‘The Seal of the Supreme Court of the Australian Capital Territory’.
- (2) The seal of the court shall be kept in the custody that the Chief Justice directs.

#### **65 Use of seals**

All writs, commissions and process issued from the court are to be—

- (a) in the name of the Crown; and
- (b) under the seal of the court or any other seal prescribed by rules of court; and
- (c) signed by the registrar or an officer authorised by the registrar.

#### **66 Date of process**

All writs and process issued from the court shall be dated as of the day they are issued.

#### **67 Oaths and affirmations**

- (1) The forms of oath or affirmation to be used in or for the purpose of proceedings in the court shall, subject to this or any other Act, be prescribed by the rules of court.

- (2) A person who is required or permitted by law to take an oath in or for the purpose of proceedings in the court is, notwithstanding that law, entitled to make an affirmation instead.

### **67A Vexatious litigants**

- (1) In this section:

*aggrieved person*, in relation to proceedings, means a person aggrieved by the institution of those proceedings.

*proceedings* means any cause, matter, action, suit or proceeding of any other kind within the jurisdiction of any court or tribunal and includes any proceeding taken in connection with any such legal proceedings pending before any court or tribunal.

*vexatious proceedings* means proceedings—

- (a) the purpose of which is to harass or annoy, to cause delay or for some other ulterior purpose; or
- (b) that lack reasonable grounds.
- (2) If, on the application of the Attorney-General or an aggrieved person, the court is satisfied that a person has frequently instituted vexatious proceedings, the court may declare the person to be a vexatious litigant.
- (3) A declaration may be expressed to apply only in relation to a particular type of matter.
- (4) A declaration may be expressed to be subject to such conditions as the court thinks fit.
- (5) If a person is declared to be a vexatious litigant—
- (a) the person, or a person acting in concert with the person, shall not institute or continue any proceedings or, for a declaration expressed to apply only in relation to a particular type of matter, proceedings of that type, without the leave of the court; and

- (b) any proceedings pending at the time of the declaration or, for a declaration expressed to apply only in relation to a particular type of matter, proceedings of that type, are stayed subject to any order of the court in relation to those proceedings.
- (6) Where the court grants leave to a person for the purposes of subsection (5) (a), it may impose such conditions as it thinks fit.
- (7) Conditions imposed under subsection (6) in relation to proceedings may include conditions—
  - (a) relating to security for costs in the proceedings; and
  - (b) specifying matters relating to the issue of process in the proceedings.
- (8) Unless expressed to remain in force until the end of a date specified in the declaration, a declaration remains in force until revoked by the court.
- (9) The court may vary a declaration.
- (10) Subject to any order of the court, an order making, varying or revoking a declaration is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (11) If proceedings are instituted by a person in contravention of this section, the proceedings shall be taken to have been permanently stayed.
- (12) If practicable, any documents filed or lodged with a court or tribunal by a person in proceedings referred to in subsection (11) shall be returned to the person by the registrar or similar officer of a court or tribunal.
- (13) Notwithstanding subsection (5), a person declared to be a vexatious litigant may, without the leave of the court, apply to the court for the revocation or variation of the declaration or of any conditions to which the declaration is subject.

## Part 7 Trial on indictment

### 68 Prosecution of indictable offences

- (1) Subject to subsection (2), an indictable offence triable before the court shall be prosecuted by information in the name of the Attorney-General or of any other person the Attorney-General, in writing, appoints for this subsection.
- (2) The Attorney-General may file an information under subsection (1) without examination or commitment for trial of the accused person.
- (3) On an information being filed without examination or commitment for trial, the court may—
  - (a) cause a summons to be issued to the accused person to appear at the time and place specified in the summons and there to answer the charge specified in the information; or
  - (b) issue a warrant for the arrest of the accused person and hold him or her in custody or admit him or her to bail.
- (4) If a person has been committed for trial on a charge for an indictable offence triable before the court, the information against the person may include, either in substitution for, or in addition to, a count charging the offence for which the person was committed, a count founded on a fact or evidence disclosed in the course of the committal proceedings.
- (5) Subsection (4) does not authorise the inclusion of more than 1 count in the same information unless those counts may lawfully be joined in a single information.
- (6) If a person is under commitment on a charge of an indictable offence triable before the court, the Attorney-General, or any other person the Attorney-General, by instrument, appoints this subsection, may decline to proceed further in the prosecution and, if the accused person is in custody, may, by warrant, direct the

discharge of the accused person from custody, and the accused person shall be discharged accordingly.

**68A Trial by jury in criminal proceedings**

Criminal proceedings shall be tried by a jury, except as otherwise provided by this part.

**68B Trial by judge alone in criminal proceedings**

- (1) An accused person in criminal proceedings shall be tried by a judge alone if—
  - (a) the accused person elects in writing to undergo such a trial; and
  - (b) the accused person produces a certificate signed by a legal practitioner stating that—
    - (i) he or she has advised the accused in relation to the election; and
    - (ii) the accused person has made the election freely; and
  - (c) the election is made before the court first allocates a date for the person's trial; and
  - (d) if there is more than 1 accused person in the proceedings—
    - (i) each other accused person also elects to be tried by the judge alone; and
    - (ii) each accused person's election is made in relation to all offences with which he or she is charged.
- (2) An accused person who elects to be tried by a judge alone may, at any time before he or she is arraigned, elect to be tried by a jury.
- (3) If an accused person makes and then withdraws an election, he or she shall not make another election.

**68C Verdict of judge in criminal proceedings**

- (1) A judge who tries criminal proceedings without a jury may make any finding that could have been made by a jury as to the guilt of the accused person and any such finding has, for all purposes, the same effect as a verdict of a jury.
- (2) The judgment in criminal proceedings tried by a judge alone shall include the principles of law applied by the judge and the findings of fact on which the judge relied.
- (3) In criminal proceedings tried by a judge alone, if a Territory law would otherwise require a warning to be given to a jury in such proceedings, the judge shall take the warning into account in considering his or her verdict.

## Part 8                      Summary offences related to    indictable offences

### 68D Related summary offences

- (1) The court may, at the conclusion of the trial of an accused person for an indictable offence, deal with any related summary offence with which the accused person has been charged, if the court considers that it is in the interests of justice.
- (2) The court shall only deal with a related summary offence with the consent of the accused person.
- (3) The court may deal with a related summary offence—
  - (a) on its own initiative; or
  - (b) on the application of the accused person; or
  - (c) on the application of the prosecutor.
- (4) The court may deal with a related summary offence with which an accused person has been charged even though it is not doing so in relation to a related summary offence with which another accused person in the same proceedings is charged.

### 68E Procedure

- (1) The court shall deal with a related summary offence under this part—
  - (a) without a jury; and
  - (b) on the basis only—
    - (i) of evidence given during the trial of the accused person for any indictable offence in the same proceedings; and
    - (ii) of any additional evidence given under this section.

- (2) The prosecutor or the accused person may, with the leave of the court, call additional evidence in relation to the related summary offence.
- (3) In sentencing or otherwise dealing with a person for a related summary offence, the court has the same functions as the Magistrates Court.

**68F Remission of related offences to Magistrates Court**

The court may, at any time, remit a related summary offence being dealt with under this part to the Magistrates Court.



## Part 9                      Miscellaneous

### 69      Interest up to judgment

- (1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods) the court shall, on application, unless good cause is shown to the contrary—
  - (a) order that there be included in the sum for which judgment is given interest at such rate as the court thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date as of which the judgment is entered; or
  - (b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which judgment is given a lump sum in lieu of any such interest.
- (2) Subsection (1) does not—
  - (a) authorise the giving of interest upon interest or of a sum in lieu of such interest; or
  - (b) apply in relation to any debt 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.
- (3) If the sum for which judgment is given (the relevant sum) includes, or if the court determines that the relevant sum includes, any amount for—
  - (a) compensation in relation to liabilities incurred that do not carry interest as against the person claiming interest or claiming a sum in lieu of interest; or
  - (b) compensation for loss or damage to be incurred or suffered after the date when judgment is given; or

(c) exemplary or punitive damages;

interest, or a sum in lieu of interest, shall not be given under subsection (1) in respect of any such amount or in respect of so much of the relevant sum as in the opinion of the court represents any cash amount.

## **70 Interest on judgments**

A judgment debt under a judgment of the court carries interest at the rate fixed by the rules of court from the date as of which the judgment is entered.

## **70A Failure to attend Supreme Court as required**

- (1) If a person duly bound by recognisance or served with a subpoena to attend as a witness in a proceeding before the Supreme Court fails to attend, or remain in attendance, before the Supreme Court as required by the recognisance or the subpoena, the court may issue its warrant directing that the person be arrested and brought before the court to give evidence in the proceeding.
- (2) If a person duly bound by a recognisance or served with a subpoena to attend as a witness in a proceeding before the Supreme Court appears or is brought before the Supreme Court, after having failed to attend or remain in attendance before the Supreme Court as required by the recognisance or the subpoena, the court may, if satisfied that the failure to attend was without just cause or reasonable excuse—
  - (a) impose on the person a fine not exceeding 50 penalty units; or
  - (b) commit the person to prison for a term not exceeding 6 months; or
  - (c) both impose the fine under paragraph (a) and commit the person to prison under paragraph (b).

**71 Security of the peace and for good behaviour**

The court may hold persons to security of the peace and for good behaviour in matters arising under the laws of the Territory.

**73 Duty of receiver and manager**

When, in any cause pending in the court, a receiver or manager appointed by the court is in possession of any property, the receiver or manager shall manage and deal with the property according to the requirements of the laws of the State or Territory in which the property is situated, in the same way in which the owner or possessor would be bound to do if in possession.

**74 Liability and protection of receivers and managers**

A receiver or manager of any property appointed by the court may, without the previous leave of the court, be sued in relation to any act or transaction in carrying on the business connected with the property.

**74A Certified copies of transcript of Supreme Court proceedings**

- (1) If a record is made of evidence given in a proceeding before the Supreme Court, the registrar has custody of the record.
- (2) The registrar shall give the directions necessary to ensure that, as and when required, a transcript of the record of evidence given in a proceeding in the Supreme Court is prepared, and, for the purpose of enabling the transcript to be prepared, the record shall be produced out of the custody of the registrar.
- (3) The person who—
  - (a) prepares a transcript under subsection (2); or
  - (b) if such a transcript is prepared under supervision—supervises the transcription;

shall certify on the transcript that it is a true transcript of the record of the proceedings produced out of the custody of the registrar.

- (4) If—
- (a) a record of evidence given in a proceeding in the Supreme Court has been made by means of sound recording apparatus; and
  - (b) the sound recording is produced out of the custody of the registrar; and
  - (c) the sound recording contains a record of the comments that purport—
    - (i) to have been made at the same time as the sound recording produced out of the custody of the registrar was made; and
    - (ii) to have been made for the purpose of identifying the proceeding or the voices recorded by the sound recording or any other matter or thing so recorded;

the sound recording is evidence of the identity of the proceedings, of the voices or of the other matter or thing, as the case may be.

- (5) On application, the registrar shall, subject to subsection (5A)—
- (a) give the applicant a copy of the whole or any requested part of a transcript prepared under subsection (2); and
  - (b) certify on the copy that it is a true copy of the transcript or part, as the case may be.
- (5A) The registrar shall not give a copy of a transcript or part of a transcript to an applicant unless—
- (a) the applicant is a party to the proceeding to which the transcript relates; or
  - (b) the applicant satisfies the registrar or a judge that he or she has good reason for applying.

- (6) If—
- (a) a document purports to be a transcript, made in accordance with this section, of evidence given by a person in a proceeding in the Supreme Court; and
  - (b) the document bears a certificate that purports to be a certificate given in accordance with subsection (5);
- any statement in the document is admissible in evidence in another proceeding to the same extent that the statement would, if given orally, be admissible in that other proceeding if the person—
- (c) is dead; or
  - (d) is outside Australia and it is not reasonably practicable to secure his or her attendance; or
  - (e) if unfit because of old age or bodily or mental condition to appear as a witness; or
  - (f) cannot with reasonable diligence be found.

## **75 Approved forms**

- (1) The registrar may, in writing, approve forms for use in relation to the court.
- (2) If the registrar approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

*Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) A form in the *Juries Act 1967*, schedule 1 immediately before the commencement of this section is, after the commencement, taken to be an approved form.
- (5) However, the form need not be notified under the *Legislation Act 2001*.

- (6) Subsections (4) and (5) are laws to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.
- (7) Subsections (4) to (6) and this subsection expire 1 year after this section commences.

## **76 Regulation-making power**

The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

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## **Schedule 1**      **Oaths and affirmations of office**

(see s 19, s 42 and s 48)

### **Part 1.1**      **Chief Justice, judges and master**

#### Oath

1, [name], do swear that 1 will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, and her heirs and successors, in the office of [\*Chief Justice/\*judge/\*master] of the Supreme Court of the Australian Capital Territory, and that 1 will do right to all manner of people according to law, without fear or favour, affection or ill will. So help me God.

#### Affirmation

1, [name], do solemnly and sincerely affirm that 1 will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, and her heirs and successors, in the office of [\*Chief Justice/\*judge/\*master] of the Supreme Court of the Australian Capital Territory, and that 1 will do right to all manner of people according to law, without fear or favour, affection or ill will.

\* State whichever is applicable.

## **Part 1.2**                      **Chief Justice, judges and master**

### Oath

1, [name], do swear that 1 will well and truly serve in the office of [\*Chief Justice/\*judge/\*master] of the Supreme Court of the Australian Capital Territory, and that 1 will do right to all manner of people according to law, without fear or favour, affection or ill will. So help me God.

### Affirmation

1, [name], do solemnly and sincerely affirm that 1 will well and truly serve in the office of [\*Chief Justice/\*judge/\*master] of the Supreme Court of the Australian Capital Territory, and that 1 will do right to all manner of people according to law, without fear or favour, affection or ill will.

\* State whichever is applicable.



## **Part 1.3**                      **Registrar**

### Oath

1, [name], do swear that 1 will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second and her heirs and successors, and that 1 will well and truly serve her in the office of registrar of the Supreme Court of the Australian Capital Territory. So help me God.

### Affirmation

1, [name], do solemnly and sincerely affirm that 1 will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second and her heirs and successors, and that 1 will well and truly serve her in the office of registrar of the Supreme Court of the Australian Capital Territory.

## Part 1.4 Registrar

### Oath

1, [name], do swear that I will well and truly serve in the office of registrar of the Supreme Court of the Australian Capital Territory. So help me God.

### Affirmation

1, [name], do solemnly and sincerely affirm that I will well and truly serve in the office of registrar of the Supreme Court of the Australian Capital Territory.

## Dictionary

(see s 2)

*acting judge* means an acting judge appointed under section 4B.

*additional judge* means a judge appointed under section 4A.

*cause* includes any suit, and also includes criminal proceedings.

*Chief Justice* means the Chief Justice of the Supreme Court, and includes a judge acting as Chief Justice.

*court* means the Supreme Court.

*Court of Appeal* means the Supreme Court constituted as a Court of Appeal under part 2A (Court of Appeal).

*criminal proceedings* means proceedings in the court for the prosecution of a person on indictment.

*defendant* includes any person against whom any relief is sought in a matter or who is required to attend the proceedings in a matter as a party.

*deputy registrar* means a deputy registrar of the court.

*deputy sheriff* means a deputy sheriff of the Territory.

*entitlements*, for part 2B (Terms and conditions of judges)—see section 37T.

*Full Court* means the court constituted by not less than 3 judges sitting together.

*judge* means a resident judge, additional judge or acting judge.

*judgment* includes any decree, order or sentence.

*Judicature Act* means the *Supreme Court of Judicature Act 1873* (36 & 37 Vic c 66) (UK).

*master* means the Master of the court.

*matter* includes any proceeding in the Supreme Court, whether between parties or not, and also any incidental proceeding in a cause or matter.

*plaintiff* includes any person seeking any relief against any other person by any form of proceeding in a court.

*pre-Judicature Act* proceedings means proceedings in the English Court of Chancery immediately before the commencement of the Judicature Act.

*President* means the President of the Court of Appeal appointed under section 37F.

*president* means the president of the administrative appeals tribunal.

*process of the court* includes a writ, summons, order, warrant and precept issued by the court.

*registrar* means the Registrar of the court.

*related summary offence*, in relation to an indictable offence, means an offence punishable on summary conviction that arises from substantially the same circumstances as those from which the indictable offence has arisen.

*resident judge* means the Chief Justice or another judge appointed under section 4, and includes the judges (other than additional

judges) who continue to hold office under the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 29A.

***sheriff*** means the Sheriff of the Territory.

***suit*** includes any action or original proceeding between parties of a civil nature.

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnotes.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
ins = inserted/added	renum = renumbered
LA = Legislation Act 2001	reloc = relocated
LR = legislation register	R[X] = Republication No
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
o = order	sub = substituted
om = omitted/repealed	SL = Subordinate Law
	<u>underlining</u> = whole or part not commenced

## Endnotes

3 Legislation history

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### 3 Legislation history

This Act was originally a Commonwealth Act—the *Seat of Government Supreme Court Act 1933* No 34 (Cwlth).

It was renamed the *Australian Capital Territory Supreme Court Act 1933* by the *Statute Revision Act 1950* (Cwlth).

It was later renamed the *Supreme Court Act 1933* by the *A.C.T. Supreme Court (Transfer) Act 1992* (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (2) converted some Commonwealth Acts in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 1 July 1992 under the *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (3).

#### Commonwealth legislation

##### **Seat of Government Supreme Court Act 1933 No 34**

assented to 9 December 1933

commenced 1 January 1934 (s 3)

as amended by

##### **Seat of Government Supreme Court Act 1935 No 27**

assented to 13 April 1935

commenced 13 April 1935

##### **Seat of Government Supreme Court Act 1945 No 57**

assented to 19 October 1945

commenced 19 October 1945 (s 2)

##### **Salaries (Statutory Offices) Adjustment Act 1947 No 52 sch 1**

assented to 1 November 1947

commenced 1 November 1947 (s 2 (1))

##### **Judges' Pensions Act 1948 No 65 sch**

assented to 9 December 1948

commenced 9 December 1948 (s 2)

##### **Salaries (Statutory Offices) Adjustment Act 1950 No 51 sch 1**

assented to 14 December 1950

commenced 1 July 1950 (s 2)

**Statute Law Revision Act 1950 No 80 sch 1**

assented to 16 December 1950  
commenced 31 December 1950 (s 2)

**Judges' Remuneration Act 1955 No 17 sch 1**

assented to 9 June 1955  
commenced 1 January 1955 (s 2)

**Australian Capital Territory Supreme Court Act 1955 No 36**

assented to 16 June 1955  
commenced 14 July 1955

**Australian Capital Territory Supreme Court Act 1956 No 47**

assented to 30 June 1956  
commenced 14 August 1956 (s 2 and Cwlth Gaz 1956 p 2489)

**Australian Capital Territory Supreme Court Act 1957 No 34**

assented to 7 June 1957  
commenced 5 July 1957

**Australian Capital Territory Supreme Court Act 1958 No 43**

assented to 29 September 1958  
commenced 29 September 1958 (s 2)

**Australian Capital Territory Supreme Court Act 1959 No 51**

assented to 22 May 1959  
commenced 22 May 1959 (s 2)

**Judges' Remuneration Act 1960 No 110 sch 1**

assented to 16 December 1960  
commenced 1 October 1960 (s 2)

**Australian Capital Territory Supreme Court Act 1964 No 109 (as amended by 1973 No 216 sch 1)**

assented to 20 November 1964  
s 5 commenced 27 October 1960 (s 2 (2))  
remainder commenced on assent (s 2 (1))

**Judges' Remuneration Act 1965 No 92 sch 1**

assented to 4 December 1965  
amdt commenced 1 July 1965 (s 2)

## Endnotes

3 Legislation history

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**Australian Capital Territory Supreme Court Act 1966 No 8**

assented to 3 May 1966  
commenced 31 May 1966

**Statute Law Revision (Decimal Currency) Act 1966 No 93 sch 1**

assented to 29 October 1966  
amds commenced 1 December 1966 (s 2 (1))

**Australian Capital Territory Supreme Court Act 1968 No 156**

assented to 10 December 1968  
commenced 10 December 1968 (s 2)

**Judges' Remuneration Act 1969 No 40 sch 1**

assented to 14 June 1969  
commenced 14 June 1969 (s 2)

**Australian Capital Territory Supreme Court Act 1971 No 13**

assented to 5 April 1971  
commenced 5 April 1971 (s 2)

**Australian Capital Territory Supreme Court Act (No 2) 1971 No 98**

assented to 17 November 1971  
commenced 17 November 1971 (s 2)

**Statute Law Revision Act 1973 No 216 sch 1**

assented to 19 December 1973  
commenced 31 December 1973 (s 2)

**Australian Capital Territory Supreme Court Amendment Act 1976 No 158**

assented to 9 December 1976  
s 12, s 14 commenced 1 February 1977 (s 2 (2) and Cwlth Gaz 1977 No S3)  
remainder commenced on assent (s 2 (1))

**Australian Capital Territory Supreme Court Amendment Act 1978 No 3**

assented to 20 March 1978  
commenced 1 April 1980 (s 2 and Cwlth Gaz 1980 No S65)

**Statute Law Revision Act 1981 No 61 sch 1 (as am by 1982 No 26 s 217)**

assented to 12 June 1981  
amds commenced 12 June 1981 (2 (1))



**Companies (Miscellaneous Amendments) Act 1981 No 92 pt 5**

assented to 18 June 1981

s 1, s 2 commenced on assent

pt 5 commenced 1 July 1982 (s 2 (3) and Cwlth Gaz 1982 No S124)

**Statute Law (Miscellaneous Amendments) Act 1981 No 176 pt 6 (as am by 1982 No 80 s 14)**

assented to 2 December 1981

pt 6 commenced 30 December 1981 (s 2 (12))

**Statute Law (Miscellaneous Amendments) Act (No 1) 1982 No 26 pt 8**

assented to 7 May 1982

pt 8 commenced 7 May 1982 (s 2 (1))

**Statute Law (Miscellaneous Provisions) Act (No 2) 1983 No 91 sch 1**

assented to 22 November 1983

amdt commenced 1 January 1984 (s 2 (4))

**Director of Public Prosecutions (Consequential Amendments) Act 1983 No 114 s 4**

assented to 14 December 1983

s 4 commenced 5 March 1984 (s 2 (1) and Cwlth Gaz 1984 No S55)

**Statute Law (Miscellaneous Provisions) Act (No 1) 1985 No 65 sch 1**

assented to 5 June 1985

amdt commenced 3 July 1985 (s 2 (1))

**Statute Law (Miscellaneous Provisions) Act (No 2) 1986 No 168 sch 1**

assented to 18 December 1986

amdt commenced 18 December 1986 (s 2 (1))

**Statute Law (Miscellaneous Provisions) Act 1988 No 38 sch 1**

assented to 3 June 1988

amds commenced 9 November 1988 (s 2 (3) and Cwlth Gaz 1988 No S348)

**Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988 No 99 sch**

assented to 2 December 1988

commenced 2 December 1988 (s 2)

## Endnotes

3 Legislation history

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### **A.C.T. Self-Government (Consequential Provisions) Act 1988 No 109 sch**

assented to 6 December 1988  
amds commenced 11 May 1989 (s 2 (3) and Cwlth Gaz 1989 No S164)

as modified by

### **A.C.T. Self-Government (Consequential Provisions) Regulations SR 1989 No 3 (as am by SR 1989 No 52, SR 1989 No 188 and Act 1992 No 49 s 16)**

notified 25 January 1989  
mod s 28 (1) commenced 11 May 1989 (SR 1989 No 52 s 2 (1))  
remainder commenced 1 July 1990 (SR 1989 No 52 s 2 (2))  
mod ended 1 July 1992

as amended by

### **Law and Justice Legislation Amendment Act 1990 No 115 sch**

assented to 21 December 1990  
amdt commenced 21 December 1990 (s 2 (1))

### **Law and Justice Legislation Amendment Act 1991 No 136 sch**

assented to 12 September 1991  
amdt commenced 10 October 1991

### **A.C.T. Supreme Court (Transfer) Act 1992 No 49 s 14, sch 1**

assented to 17 June 1992  
amds commenced 1 July 1992 (s 2)

## **Legislation after becoming Territory enactment**

### **Supreme Court (Amendment) Act 1993 No 59**

notified 6 September 1993 (Gaz 1993 No S172)  
commenced 6 September 1993 (s 2)

### **Supreme Court (Amendment) Act (No 2) 1993 No 91**

notified 17 December 1993 (Gaz 1993 No S258)  
commenced 17 December 1993 (s 2)

### **Legal Practitioners (Amendment) Act 1993 No 94 s 45**

notified 24 December 1993 (Gaz 1993 No S267)  
commenced 24 December 1993 (s 2)

**Supreme Court (Amendment) Act 1994 No 3**

notified 14 March 1994 (Gaz 1993 No S44)  
commenced 14 March 1994 (s 2)

**Judicial Commissions (Consequential Amendments) Act 1994 No 10  
s 11**

notified 14 March 1994 (Gaz 1994 No S44)  
commenced 14 March 1994 (s 2)

**Public Sector Management (Consequential and Transitional  
Provisions) Act 1994 No 38 sch 1 pt 75**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 75 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Mental Health (Consequential Provisions) Act 1994 No 45 sch**

notified 7 September 1994 (Gaz 1994 No S177)  
s 1, s 2 commenced 7 September 1994 (s 2 (1))  
sch commenced 6 February 1995 (s 2 (2) and see Gaz 1995 No S33)

**Administrative Appeals (Consequential Amendments) Act 1994 No 60  
sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 Nov 1994 (s 2 (2) and see Gaz 1994 No S250)

**Statute Law Revision Act 1995 No 46 sch**

notified 18 December 1995 (Gaz 1995 No S306)  
amds commenced 18 December 1995 (s 2)

**Financial Management and Audit (Consequential and Transitional  
Provisions) Act 1996 No 26 sch pt 34**

notified 1 July 1996 (Gaz 1996 No S130)  
commenced 1 July 1996 (s 2)

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41  
sch 1**

notified 19 September 1997 (Gaz 1997 No S264)  
s 1, s 2 commenced 19 September 1997 (s 2 (1))  
sch 1 commenced 23 September 1997 (s 2 (2) and Gaz 1997 No S280)

## Endnotes

3 Legislation history

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**Coroners (Consequential Provisions) Act 1997 No 58 sch 1**

notified 9 October 1997 (Gaz 1997 No S300)  
commenced 9 October 1997 (s 2)

**Juries (Amendment) Act 1997 No 83 s 34**

notified 25 November 1997 (Gaz 1997 No S360)  
s 34 commenced 25 November 1997 (s 2 (1))

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Supreme Court (Amendment) Act 1998 No 6**

notified 25 May 1998 (Gaz 1998 No S150)  
commenced 25 May 1998 (s 2)

**Supreme Court (Amendment) Act (No 2) 1998 No 72**

notified 23 December 1998 (Gaz 1998 No S212)  
s 4, s 5 and s 7 taken to have commenced 29 September 1997 (s 2 (2))  
remainder commenced 23 December 1998 (s 2 (1))

**Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 No 22 pt 14**

notified 14 April 1999 (Gaz 1999 No S16)  
s 1, s 2 commenced 14 April 1999 (s 2 (1))  
pt 14 commenced 1 September 1999 (s 2 and Gaz 1999 No 35)

**Children and Young People (Consequential Amendments) Act 1999 No 64 sch 2**

notified 10 November 1999 (Gaz 1999 No 45)  
s 1, s 2 commenced 10 November 1999 (s 2 (1))  
sch 2 commenced 10 May 2000 (s 2 (2))

**Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3**

notified 10 November 1999 (Gaz 1999 No 45)  
commenced 10 November 1999 (s 2)

**Victims of Crime (Financial Assistance) (Amendment) Act 1999 No 91 sch 2**

notified 23 December 1999 (Gaz 1999 No S65)  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
sch 2 commenced 24 December 1999 (s 2 (2) and Gaz 1999 No S69)

**Justice and Community Safety Legislation Amendment Act 2000 No 1 sch**

notified 9 March 2000 (Gaz 2000 No 10)  
amds commenced 9 March 2000 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2000 (No 3) No 17 sch 1**

notified 1 June 2000 (Gaz 2000 No 22)  
commenced 1 June 2000 (s 2)

**Supreme Court Amendment Act 2001 No 7**

notified 8 March 2001 (Gaz 2001 No 10)  
commenced 8 March 2001 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 375**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 375 commenced 12 September 2001 (s 2 and Gaz 2001 No S65)

**Supreme Court Amendment Act 2001 (No 2) 2001 No 54**

notified 15 August 2001 (Gaz 2001 No S57)  
s 1, s 2 commenced 15 August 2001 (IA s 10B)  
s 3, s 15, sch 1 and sch 2 commenced 15 August 2001 (s 2 (1))  
ss 4-12 and s 14 commenced 11 September 2001 (Gaz 2001 No S69 and LA s 77 (2))  
s 13 to the extent that it inserts s 37E (1) and 37E (3), s 37F, s 37G, s 37H, s 37I, s 37J, s 37K, s 37L, s 37M, s 37N, s 37O and s 37P commenced 11 September 2001 (Gaz 2001 No S69 and LA s 77 (2))  
s 13 to the extent that it inserts s 37E (2) (a) (i) and s 37E (2) (c) commenced 1 October 2001 (Gaz 2001 No S69)  
s 13 to the extent that it inserts s 37E (2) (a) (ii), (b), (4), s 37Q and s 37S awaiting commencement (s 2 (2))

*Note* LA s 79 does not apply to this Act

**Crimes Legislation Amendment Act 2001 No 63 pt 11**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
pt 11 awaiting commencement (s 2 (1))

*Note* LA s 79 does not apply to this Act

## Endnotes

4 Amendment history

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### Defamation Act 2001 No 88 s 43 (3)

notified LR 24 September 2001

s 1, s 2 commenced 24 September 2001 (LA s 75)

s 43 (3) commenced 1 July 2002 (s 2)

## 4 Amendment history

In this table Acts and statutory rules for 1992 and earlier years are Commonwealth Acts and statutory rules, and Acts for 1993 and later years are ACT Acts.

### Title

title am 1971 No 98

### Name of Act

s 1 am 1950 No 80; 1992 No 49  
sub 2001 No 54 amdt 1.1

### Dictionary

s 2 orig s 2 sub 1959 No 51  
am 1964 No 109  
om 1973 No 216  
(prev s 5) am 1935 No 27; 1945 No 57; 1957 No 34; 1958 No 43; 1964 No 109; 1968 No 156; 1971 No 13; 1971 No 98; 1973 No 216; 1976 No 158; 1982 No 26; 1988 No 38; 1988 No 109; 1992 No 49  
renum 1992 No 49

s 2 def **acting judge** ins 1993 No 91 s 4  
om 2001 No 54 amdt 1.2  
def **additional judge** am 1993 No 91 sch 2  
om 2001 No 54 amdt 1.2  
def **Chief Justice** om 2001 No 54 amdt 1.2  
def **court** ins 1993 No 91 sch 2  
def **criminal proceedings** ins 1993 No 59 s 4  
def **deputy register** am 1993 No 91 sch 2  
def **enactment** om 1993 No 91 sch 2  
def **Full Court** ins 1993 No 91 sch 2  
def **judge** (prev **judge** or **judge of the Supreme Court**) sub 1993 No 91 s 4  
om 2001 No 54 amdt 1.2  
def **Judicature Act** ins 1993 No 91 sch 2  
def **master** am 1993 No 91 sch 2  
def **Ordinance** om 1993 No 91 sch 2  
def **pre-Judicature Act proceedings** ins 1993 No 91 sch 2  
def **president** am 1993 No 91 sch 2; 1994 No 60 sch 1  
def **process of the court** ins 1993 No 91 sch 2  
def **registrar** ins 1993 No 91 sch 2  
def **related summary offence** ins 1993 No 59 s 4

def **resident judge** ins 1993 No 91 s 4  
 om 2001 No 54 amdt 1.2  
 def **sheriff** ins 1993 No 91 sch 2  
 def **the court** om 1993 No 91 sch 2  
 def **the Judicature Act** om 1993 No 91 sch 2  
 def **the Registrar** om 1993 No 91 sch 2  
 def **the Sheriff** om 1993 No 91 sch 2  
 def **the Supreme Court** om 1993 No 91 sch 2  
 def **the Territory or the Australian Capital Territory** om 1993  
 No 91 sch 2  
 defs reloc to dict 2001 No 54 amdt 1.3  
 om 2001 No 54 amdt 1.4  
 ins 2001 No 54 amdt 1.5

**Notes**

2A ins 2001 No 54 amdt 1.5

**Establishment**

s 3 orig s 3 am 1973 No 216; 1976 No 158 ; 1981 No 61  
 om 1992 No 49  
 (prev s 6) am 1958 No 43; 1971 No 13; 1971 No 98; 1976 No  
 158; 1982 No 26  
 renum 1992 No 49  
 am 1993 No 91 s 5

**Resident judges**

s 4 hdg sub 2001 No 54 amdt 1.6  
 s 4 orig s 4 om 1973 No 216  
 (prev s 7) sub 1958 No 43  
 am 1968 No 156; 1971 No 13; 1971 No 98; 1973 No 216; 1976  
 No 158; 1982 No 26; 1992 No 49  
 renum 1992 No 49  
 am 1993 No 91 sch 2; 1994 No 10 s 11 (1); 1997 No 96 sch 1;  
 2001 No 54 amdt 1.7, amdt 1.8

**Additional judges**

s 4A orig s 4A renum as s 4B  
 pres s 4A ins 2001 No 54 amdt 1.9

**Acting judges**

s 4B hdg sub 2001 No 54 amdt 1.10  
 s 4B (prev s 4A) ins 1993 No 91 s 6  
 am 1997 No 96 sch 1  
 renum 2001 No 54 amdt 1.10  
 am 2001 No 54 amdt 1.11

## Endnotes

### 4 Amendment history

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#### **Seniority of judges**

s 5 (prev s 7AA) ins 1988 No 109  
sub 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 7; 2001 No 54 s 4, s 5; R7 LA (see 2001 No 54 s 6)

#### **Acting Chief Justice**

s 6 (prev s 7A) ins 1976 No 158  
am 1982 No 26  
renum 1992 No 49  
am 2001 No 54 amdt 1.12

#### **Arrangement of business of court**

s 7 (prev s 7B) ins 1976 No 158  
am 1982 No 26  
renum 1992 No 49  
am 2001 No 54 s 7

#### **Exercise of jurisdiction**

s 8 am 1945 No 57; 1956 No 47  
sub 1958 No 43  
am 1968 No 156; 1971 No 13  
sub 1971 No 98  
am 1976 No 158  
sub 1988 No 38  
mod SR 1989 No 3 (as am SR 1989 No 188) (exp 1 July 1992)  
am 1992 No 49; 1993 No 91 sch 2; 2001 No 54 s 8

#### **Exercise of jurisdiction by master**

s 9 (prev s 8AAA) ins 1988 No 38  
renum 1992 No 49  
am 1993 No 91 sch 2; 2001 No 54 s 9, s 10; 2001 No 54 amdt 1.13

#### **Exercise of jurisdiction by registrar**

s 10 (prev s 8AAB) ins 1988 No 38  
renum 1992 No 49  
am 1993 No 91 sch 2; 2001 No 54 amdt 1.13

#### **Exercise of jurisdiction—legal practitioners**

s 11 (prev s 8AA) ins 1968 No 156  
am 1971 No 13; 1971 No 98; 1976 No 158  
mod SR 1989 No 3 (as am SR 1989 No 52) (exp 1 July 1992)  
sub 1990 No 115  
renum 1992 No 49  
sub 1993 No 91 s 8  
am 1993 No 94 s 45; 1997 No 96 sch 1



**Exercise of jurisdiction under subsections 46 (4) and 48 (2) of the administrative appeals tribunal Act**

s 12 hdg am 1993 No 91 note  
s 12 (prev s 8AABA) mod SR 1989 No 3 (as am SR 1989 No 188)  
(exp 1 July 1992)  
ins 1992 No 49  
renum 1992 No 49  
am 1993 No 91 sch 2; 1994 No 60 sch 1  
om 2000 No 1 sch

**Power of judge to order that jurisdiction in a matter be exercised by Full Court**

s 13 hdg am 1993 No 91 note  
s 13 orig s 13 am 1968 No 156; 1971 No 98  
om 1976 No 158  
(prev s 8AB) ins 1971 No 98  
am 1976 No 158  
renum 1992 No 49  
am 1993 No 91 sch 2

**Full Court decisions—equal division of opinion**

s 14 (prev s 8AC) ins 1971 No 98  
am 1976 No 158; 1988 No 38  
mod SR 1989 No 3 (as am SR 1989 No 188) (exp 1 July 1992)  
am 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 9, sch 2; 2001 No 54 amdt 1.14

**Exercise by court of powers of master**

s 15 (prev s 8AD) ins 1988 No 38  
renum 1992 No 49  
am 1993 No 91 sch 2; 2001 No 54 amdt 1.15

**Holding other judicial offices**

s 16 (prev s 8A) ins 1945 No 57  
sub 1957 No 34; 1958 No 43; 1964 No 109  
am 1973 No 216; 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 10, sch 2

## Endnotes

### 4 Amendment history

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#### **Salaries and travelling expenses**

s 17 (prev s 8B) ins 1945 No 57  
am 1947 No 52; 1948 No 65; 1950 No 51; 1955 No 17; 1958 No  
43; 1960 No 110; 1965 No 92; 1966 No 93; 1969 No 40;  
1971 No 13  
sub 1976 No 158  
am 1982 No 26; 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 11, sch 2; 1996 No 26 sch pt 34; 1997 No 41  
sch 1  
om 1998 No 72 s 4

#### **Principal seat of court and sittings**

s 18 (prev s 9) am 1992 No 49  
renum 1992 No 49  
am 1993 No 91 sch 2

#### **Oath or affirmation of office—judges**

s 19 (prev s 10) am 1958 No 43; 1976 No 158; 1981 No 176 (as am  
by 1982 No 80); 1982 No 26; 1992 No 49  
renum 1992 No 49  
sub 1993 No 91 s 12; 2001 No 7 s 4

#### **Jurisdiction and powers of Supreme Court**

s 20 (prev s 11) sub 1957 No 34  
am 1976 No 158; 1981 No 61; 1988 No 109  
sub 1992 No 49  
renum 1992 No 49  
am 1993 No 91 sch 2

#### **Distinction between court and chambers**

s 21 (prev s 12) am 1957 No 34; 1968 No 156; 1988 No 109  
renum 1992 No 49  
sub 1993 No 91 s 13

#### **Trial by jury in civil proceedings**

s 22 hdg sub 1993 No 59 note  
s 22 (prev s 14) renum 1992 No 49  
am 1993 No 91 s 14, sch 2; 2001 No 88 s 43 (3)

#### **Costs**

s 23 (prev s 15) am 1957 No 34; 1988 No 109  
renum 1992 No 49  
am 1993 No 91 sch 2

#### **Service of writs out of the jurisdiction of the court**

s 24 (prev s 16) am 1950 No 80  
renum 1992 No 49  
am 1993 No 91 sch 2

**Law and equity to be concurrently administered**

s 25 (prev s 17) am 1976 No 158  
renum 1992 No 49  
am 1993 No 91 sch 2

**Equities of plaintiff**

s 26 (prev s 18) renum 1992 No 49  
sub 1993 No 91 sch 2

**Equities of defendant**

s 27 (prev s 19) renum 1992 No 49  
sub 1993 No 91 sch 2

**Counterclaims and third parties**

s 28 (prev s 20) am 1957 No 34; 1988 No 109  
renum 1992 No 49  
sub 1993 No 91 sch 2

**Incidental equities**

s 29 orig s 29 om 1959 No 51  
(prev s 21) renum 1992 No 49  
sub 1993 No 91 sch 2

**Defence or stay of proceedings instead of prohibition or injunction**

s 30 orig s 30 om 1959 No 51  
(prev s 22) renum 1992 No 49  
sub 1993 No 91 sch 2

**Common law and statute**

s 31 orig s 31 om 1959 No 51  
(prev s 23) am 1973 No 216  
renum 1992 No 49  
sub 1993 No 91 sch 2

**Final determination of matters**

s 32 orig s 32 om 1959 No 51  
(prev s 24) renum 1992 No 49  
sub 1993 No 91 sch 2

**Law and equity**

s 33 orig s 33 om 1959 No 51  
(prev s 25) renum 1992 No 49  
sub 1993 No 91 sch 2

**Remuneration and allowances**

s 33B ins 1988 No 38  
om 1992 No 49

**Terms and conditions of appointment not provided by Act**

s 33E ins 1988 No 38  
om 1992 No 49

## Endnotes

4 Amendment history

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### **Injunctions**

s 34 (prev s 26) renum 1992 No 49  
sub 1993 No 91 s 15  
am 2001 No 54 amdt 1.16, amdt 1.17

### **Receivers**

s 34A ins 1993 No 91 s 15

### **Prerogative remedies**

s 34B ins 1993 No 91 s 15

### **Rules of practice and procedure—judicial discretion**

s 35 (prev s 27) sub 1957 No 34  
am 1988 No 109  
renum 1992 No 49  
sub 1993 No 91 s 15

### **Rules of court**

s 36 (prev s 28) am 1950 No 80; 1957 No 34; 1968 No 156; 1971 No  
98; 1973 No 216; 1976 No 158; 1978 No 3; 1981 No 92;  
1982 No 26; 1986 No 168; 1988 No 99; 1988 No 108  
mod SR 1989 No 3 (as am SR 1989 No 52) (exp 1/07/92)  
am 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 16, sch 2; 1997 No 96 sch 1; 1999 No 66 sch  
3; 2001 No 54 s 11, s 12

### **Fees and charges—determination**

s 37 (prev s 29) om 1959 No 51  
ins 1978 No 3  
renum 1992 No 49  
sub 1994 No 3 s 4  
am 1997 No 96 sch 1; 1999 No 66 sch 3; 2001 No 44 amdts  
1.3957-1.3959

### **Fees and charges—payment**

s 37A ins 1994 No 3 s 4  
am 2001 No 44 amdt 1.3960

### **Fees and charges—remission, refund, deferral, waiver and exemption**

s 37B ins 1994 No 3 s 4  
am 1994 No 45 sch; 1995 No 46 sch; 1997 No 58 sch 1; 1997  
No 83 s 34; 1999 No 64 sch 2; 1999 No 66 sch 3; 1999 No  
91 sch 2

### **Fees and charges—recovery if otherwise not payable**

s 37C ins 1994 No 3 s 4

### **Fees and charges—review of decisions**

s 37D ins 1994 No 3 s 4  
am 1999 No 66 sch 3

**Court of Appeal**

pt 2A hdg orig pt 2A hdg renum as pt 2B hdg  
pres pt 2A hdg ins 2001 No 54 s 13

**Appellate jurisdiction**

s 37E orig s 37E renum as s 37T  
pres s 37E ins 2001 No 54 s 13  
s 37E (2) (a) (ii), (b) and (4) were uncommenced at  
republication date  
am 2001 No 63 s 72; R9 LA (see 2001 No 63 s 73)

**Appointment of President**

s 37F orig s 37F renum as s 37U  
pres s 37F ins 2001 No 54 s 13

**Arrangement of business of Court of Appeal**

s 37G orig s 37G renum as s 37V  
pres s 37G ins 2001 No 54 s 13

**Appeal bench**

s 37H orig s 37H renum as s 37W  
pres s 37 H ins 2001 No 54 s 13

**Presiding judge**

s 37I orig s 37I renum as s 37X  
pres s 37I ins 2001 No 54 s 13

**Appeal court constituted by single judge**

s 37J ins 2001 No 54 s 13

**Decision-making**

s 37K ins 2001 No 54 s 13

**Appeal judge unable to continue sitting**

s 37L ins 2001 No 54 s 13

**Reserved judgments**

s 37M ins 2001 No 54 s 13

**Evidence on appeal**

s 37N ins 2001 No 54 s 13

**Judgment on appeal**

s 37O ins 2001 No 54 s 13

**New trials**

s 37P ins 2001 No 54 s 13

**Bail time on appeal does not count towards prison sentence**

s 37Q ins 2001 No 54 s 13

**Reference appeal following acquittal on indictment**

s 37S ins 2001 No 54 s 13

## Endnotes

4 Amendment history

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### **Terms and conditions of judges**

pt 2B hdg (prev pt 2A hdg) ins 1998 No 72 s 5  
renum 2001 No 54 amdt 1.18

### **Meaning of *entitlements***

s 37T (prev s 37E) ins 1998 No 72 s 5  
renum 2001 No 54 amdt 1.23

### **Resident judges**

s 37U (prev s 37F) ins 1998 No 72 s 5  
am 2001 No 54 amdt 1.19-1.21  
renum 2001 No 54 amdt 1.23

### **Acting judges**

s 37V (prev s 37G) ins 1998 No 72 s 5  
am 2001 No 54 amdt 1.22  
renum 2001 No 54 amdt 1.23

### **Dual appointments**

s 37W (prev s 37H) ins 1998 No 72 s 5  
renum 2001 No 54 amdt 1.23

### **Accrual and appropriation**

s 37X (prev s 37I) ins 1998 No 72 s 5  
renum 2001 No 54 amdt 1.23

### **The master**

pt 3 hdg prev pt 3 hdg om 1959 No 51  
pres pt 3 hdg ins 1988 No 38

### **The master**

s 38 (prev s 30) om 1959 No 51  
ins 1988 No 38  
renum (Cwlth) 1992 No 49

### **Powers and duties of master**

s 39 (prev s 31) om 1959 No 51  
ins 1988 No 38  
am 1988 No 109  
renum 1992 No 49  
am 1993 No 91 sch 2

### **Appointment of master**

s 40 (prev s 32) om 1959 No 51  
ins 1988 No 38  
am 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 17; 1997 No 96 sch 1

**Term of office**

s 41 (prev s 33) om 1959 No 51  
ins 1988 No 38  
renum 1992 No 49  
am 1993 No 91 s 18

**Extension of term of office**

s 41A ins 1993 No 91 s 19

**Terms and conditions not provided for by this Act**

s 41B ins 1993 No 91 s 19

**Holding other offices**

s 41C ins 1993 No 91 s 19

**Oath or affirmation of office—master**

s 42 (prev s 33A) ins 1988 No 38  
renum 1992 No 49  
sub 1993 No 91 s 19; 2001 No 7 s 5

**Resignation**

s 43 (prev s 33C) ins 1988 No 38  
am 1992 No 49  
renum 1992 No 49

**Retirement**

s 44 (prev s 33D) ins 1988 No 38  
renum 1992 No 49  
sub 1994 No 10 s 11 (2)

**Acting appointments**

s 45 (prev s 33F) ins 1988 No 38  
am 1992 No 49  
renum 1992 No 49  
am 1994 No 10 s 11 (3); 2001 No 44 amdt 1.3961, amdt 1.3962

**Appointment**

s 46 (prev s 34) am 1957 No 34  
sub 1964 No 109  
am 1971 No 98; 1988 No 109  
renum 1992 No 49  
am 1993 No 91 s 20, sch 2

**Acting appointments**

s 46A ins 1993 No 91 s 21

**Staff assisting registrar**

s 46B ins 1994 No 38 sch 1 pt 75

## Endnotes

4 Amendment history

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### **Functions of registrar and deputy registrars**

s 47 (prev s 35) sub 1957 No 34  
am 1968 No 156; 1983 No 91; 1988 No 38; 1988 No 109  
renum 1992 No 49  
sub 1993 No 91 sch 2

### **Oath or affirmation of office—registrar**

s 48 (prev s 35AA) ins 1992 No 49  
renum 1992 No 49  
sub 1993 No 91 sch 2; 2001 No 7 s 6

### **Proceedings before registrar in relation to winding-up of companies**

s 49 (prev s 35A) ins 1968 No 156  
am 1988 No 38; 1991 No 136  
renum 1992 No 49  
am 1993 No 91 sch 2

### **Functions of sheriff**

s 50 (prev s 36) renum 1992 No 49  
sub 1993 No 91 sch 2

### **Appeals**

pt 6 hdg om 1976 No 158

### **Deputy sheriffs**

s 51 orig s 51 am 1955 No 36; 1957 No 34; 1966 No 93; 1968 No  
156  
om 1976 No 158  
(prev s 37) renum 1992 No 49  
sub 1993 No 91 sch 2

### **Process of court if sheriff or deputy sheriff is interested party**

s 52 orig s 52 sub 1964 No 109  
om 1976 No 158  
(prev s 37A) ins 1964 No 109  
am 1988 No 109  
renum 1992 No 49  
sub 1993 No 91 sch 2

### **Sheriff's assistants**

s 53 (prev 37B) ins 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 22, sch 2

### **Entry, search and seizure—sheriff's powers**

s 53A ins 1998 No 6 s 4  
am 2001 No 54 amdt 1.24



**Manner of giving evidence**

s 54 (prev s 38) sub 1971 No 98  
am 1988 No 109  
renum 1992 No 49  
am 1993 No 91 sch 2

**Evidence by affidavit**

s 55 (prev s 39) am 1957 No 34  
sub 1971 No 98  
renum 1992 No 49  
am 1993 No 91 sch 2; 1997 No 96 sch 1

**Hearing of bail applications**

s 55A ins 1999 No 22 s 38  
am 2000 No 17 sch 1; 2001 No 54 amdt 1.25

**Appearance by legal practitioner**

s 56 (prev s 40) sub 1966 No 8  
renum 1992 No 49  
am 1993 No 91 sch 2; 1997 No 96 sch 1

**Orders and commissions for examination of witnesses**

s 57 (prev s 41) renum 1992 No 49  
am 1993 No 91 sch 2

**Non-appearance or absence of some defendants**

s 58 (prev s 42) renum 1992 No 49  
am 1993 No 91 sch 2

**Supreme Court trials—evidence of dead or absent persons**

s 58A reloc from Evidence Act 1971 s 73 by 1999 No 66 sch 3

**Amendment of defects**

s 59 (prev s 43) renum 1992 No 49  
sub 1993 No 91 sch 2

**Formal defects to be amended**

s 60 orig s 60 om 1973 No 216  
(prev s 44) renum 1992 No 49  
am 1993 No 91 sch 2

**Completion of part-heard matters—end of term of office**

s 60A ins 1993 No 91 s 23  
am 2001 No 54 s 14

**Reserved judgments**

s 61 (prev s 44A) ins 1981 No 176  
renum 1992 No 49  
am 1993 No 91 sch 2  
sub 2001 No 54 amdt 1.26

## Endnotes

4 Amendment history

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### **Matter heard in one place may be further dealt with at another place**

s 62 (prev s 45) renum 1992 No 49  
om 1993 No 91 sch 2

### **Change of venue**

s 63 (prev s 46) renum 1992 No 49  
sub 1993 No 91 sch 2

### **Seal**

s 64 (prev s 47) am 1971 No 98; 1976 No 158; 1982 No 26  
renum 1992 No 49  
am 1993 No 91 sch 2

### **Use of seals**

s 65 (prev s 48) renum 1992 No 49  
sub 1993 No 91 sch 2

### **Date of process**

s 66 (prev s 49) renum 1992 No 49  
am 1993 No 91 sch 2

### **Oaths and affirmations**

s 67 (prev s 50) am 1957 No 34; 1992 No 49  
renum 1992 No 49  
sub 1993 No 91 s 24

### **Vexatious litigants**

s 67A ins 1998 No 72 s 6  
am 2001 No 44 amdt 1.3963

### **Trial on indictment**

pt 7 hdg sub 1993 No 59 s 5

### **Prosecution of indictable offences**

s 68 hdg sub 1993 No 59 note  
s 68 (prev s 53) sub 1957 No 34  
am 1981 No 176; 1983 No 114  
mod SR 1989 No 3 (as am SR 1989 No 52) (exp 1 July 1992)  
am 1992 No 49  
renum 1992 No 49  
am 1993 No 91 sch 2; 2001 No 44 amdt 1.3964

### **Trial by jury in criminal proceedings**

s 68A ins 1993 No 59 s 6

### **Trial by judge alone in criminal proceedings**

s 68B ins 1993 No 59 s 6  
am 1997 No 96 sch 1

### **Verdict of judge in criminal proceedings**

s 68C ins 1993 No 59 s 6

**Summary offences related to indictable offences**

pt 8 hdg ins 1993 No 59 s 6

**Related summary offences**

s 68D ins 1993 No 59 s 6  
am 2001 No 54 amdt 1.27

**Procedure**

s 68E ins 1993 No 59 s 6

**Remission of related offences to Magistrates Court**

s 68F ins 1993 No 59 s 6

**Miscellaneous**

pt 9 hdg ins 1993 No 59 s 6

**Interest up to judgment**

s 69 (prev s 53A) ins 1981 No 176  
renum 1992 No 49  
am 1993 No 91 sch 2

**Interest on judgments**

s 70 (prev s 54) am 1966 No 93  
sub 1976 No 158  
renum 1992 No 49

**Failure to attend Supreme Court as required**

s 70A reloc from Evidence Act 1971 s 97 by 1999 No 66 sch 3

**Security of the peace and for good behaviour**

s 71 (prev s 55) am 1971 No 98; 1973 No 216; 1992 No 49  
renum 1992 No 49  
am 1993 No 91 sch 2

**Powers of judge**

s 72 (prev s 56) renum 1992 No 49  
om 1993 No 91 sch 2

**Duty of receiver and manager**

s 73 (prev s 57) renum 1992 No 49  
am 1993 No 91 sch 2

**Liability and protection of receivers and managers**

s 74 (prev s 58) renum 1992 No 49  
am 1993 No 91 sch 2

**Certified copies of transcript of Supreme Court proceedings**

s 74A reloc from Evidence Act 1971 s 91 with amdts by 1999 No 66  
sch 3

**Approved forms**

s 75 orig s 75 renum as s 76 2001 No 44 amdt 1.3965  
pres s 75 ins 2001 No 44 amdt 1.3965

## Endnotes

4 Amendment history

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### Regulation-making power

s 76 (prev s 59) om 1964 No 109  
renum as s 75 1992 No 49  
sub 1993 No 91 s 25  
sub as s 76 2001 No 44 amdt 1.3965

### The schedules

hdg to schs om 1985 No 65

### Rules relating to service out of the jurisdiction

first schedule om 1950 No 80

### Form of certificate of judgment

second schedule om 1959 No 51

### Oaths and affirmations of office

sch 1 (prev sch) ins 1993 No 91 s 26, sch 1  
sub 2001 No 7 s 7  
sch 1 hdg (prev sch hdg) renum R7 LA  
pt 1.1 hdg (prev pt 1 hdg) renum R7 LA  
pt 1.2 hdg (prev pt 2 hdg) renum R7 LA  
pt 1.3 hdg (prev pt 3 hdg) renum R7 LA  
pt 1.4 hdg (prev pt 4 hdg) renum R7 LA

### Dictionary

dict ins 2001 No 54 amdt 1.28  
def **acting judge** ins 2001 No 54 amdt 1.28  
def **additional judge** ins 2001 No 54 amdt 1.28  
def **clause** reloc from s 2 2001 No 54 amdt 1.3  
def **Chief Justice** ins 2001 No 54 amdt 1.28  
def **court** ins 1993 No 91 sch 2  
reloc from s 2 2001 No 54 amdt 1.3  
def **Court of Appeal** ins 2001 No 54 amdt 1.28  
def **criminal proceedings** ins 1993 No 59 s 4  
reloc from s 2 2001 No 54 amdt 1.3  
def **defendant** reloc from s 2 2001 No 54 amdt 1.3  
def **deputy registrar** reloc from s 2 2001 No 54 amdt 1.3  
def **deputy sheriff** reloc from s 2 2001 No 54 amdt 1.3  
def **entitlements** ins 2001 No 54 amdt 1.28  
def **Full Court** ins 1993 No 91 sch 2  
reloc from s 2 2001 No 54 amdt 1.3  
def **judge** sub 1993 No 91 s 4  
reloc from s 2 2001 No 54 amdt 1.3  
def **judgment** reloc from s 2 2001 No 54 amdt 1.3  
def **Judicature Act** ins 1993 No 91 sch 2  
reloc from s 2 2001 No 54 amdt 1.3  
def **master** ins 1993 No 91 sch 2  
reloc from s 2 2001 No 54 amdt 1.3  
def **matter** reloc from s 2 2001 No 54 amdt 1.3

def **plaintiff** reloc from s 2 2001 No 54 amdt 1.3  
 def **pre-Judicature Act proceedings** reloc from s 2 2001 No 54 amdt 1.3  
 def **President** ins 2001 No 54 amdt 1.28  
 def **president** am 1993 No 91 sch 2; 1994 No 60 sch 1  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **process of the court** ins 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **registrar** ins 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **related summary offence** ins 1993 No 59 s 4  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **resident judge** ins 2001 No 54 amdt 1.28  
 def **sheriff** ins 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **suit** reloc from s 2 2001 No 54 amdt 1.3

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1992 No 49	1 July 1992
2	Act 1993 No 94	31 December 1993
3	Act 1994 No 60	28 February 1995
4	Act 1996 No 26	30 November 1996
5	Act 1998 No 72	31 March 1999
6	Act 2000 No 17	1 September 2000
7	<u>Act 2001 No 88</u>	12 September 2001
8*	<u>Act 2001 No 88</u>	30 April 2002

## Endnotes

6 Uncommenced amendments

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### 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

<b>1 Supreme Court Amendment Act 2001 (No 2) Act No 54 s 13 to the extent that it inserts s 37E (2) (a) (ii), (b), (4), s 37Q and s 37S</b>
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### 13 New part 2A

*after part 2, insert*

#### **U 37E Appellate jurisdiction**

...

(2) ...

(a) ...

(ii) other judgments of the court (except judgments of the registrar, the Full Court exercising appellate jurisdiction or the Court of Appeal itself);

(b) appeals under section 37S (Reference appeal following acquittal on indictment);

...

(4) Also, an appeal may be brought against an interlocutory judgment of the court constituted by a single judge only with leave of the Court of Appeal.

#### **37Q Bail time on appeal does not count towards prison sentence**

If a person who has been convicted and sentenced to a term of imprisonment appeals to the Court of Appeal (against the conviction, or sentence, or both), any time spent while released on bail pending the decision on the appeal does not count as part of the term of imprisonment.

**37S Reference appeal following acquittal on indictment**

- (1) This section applies if a person has been tried on indictment in the court and acquitted in relation to all or any part of the indictment.
- (2) The Court of Appeal may, on application by the Attorney-General or the director of public prosecutions (the *applicant*), hear and decide (by a *reference appeal*) any question of law arising at or in relation to the trial.
- (3) An application must be made within 6 weeks after the end of the trial, or within any longer period allowed by the Court of Appeal.
- (4) Either or both of the following people (an *interested party*) may be heard in the reference appeal:
  - (a) a person charged at the trial;
  - (b) a person affected by any decision in the trial.
- (5) If an interested party is not represented in the appeal, the applicant must instruct counsel to argue the reference appeal on the party's behalf.
- (6) The decision on the reference appeal does not invalidate or affect any verdict or decision given at the trial.

**2 Crimes Legislation Amendment Act 2001 Act No 63 pt 11****72 Appellate jurisdiction  
New section 37E (2) (aa)**

*insert*

- (aa) orders to review under section 37R (Order to review acquittal);

**73 Section 37E (2)**

*renumber paragraphs when Act next republished under Legislation Act 2001*

Authorised when accessed at [www.legislation.act.gov.au](http://www.legislation.act.gov.au) or in authorised printed form

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