

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Supreme Court Amendment Bill 2001

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2001 017B

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Supreme Court Amendment Bill 2001

A Bill for

An Act to amend the *Supreme Court Act 1933*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

2001 017B

1 Name of Act

This Act is the *Supreme Court Amendment Act 2001*.

2 Commencement

(1) The following provisions commence on the day this Act is notified in the Gazette:

- section 3 (Act amended)
- section 15 (Acts amended consequentially—schedule 2)
- schedule 1 (Consequential and technical amendments of the Supreme Court Act 1933)
- schedule 2 (Consequential amendments of other Acts).

(2) The remaining provisions commence on a day fixed by the Minister by notice in the Gazette.

(3) The *Legislation Act 2001*, section 79 (Automatic commencement of postponed law) does not apply to this Act.

Note 1 The provisions of an Act providing for its name and commencement automatically commence on its notification day (see *Legislation Act 2001*, s 75).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions under subsection (2) (see *Legislation Act 2001*, s 77 (1)).

3 Act amended

This Act amends the *Supreme Court Act 1933*.

Note The Act is amended in the body of the Act and in schedule 1.

4 Seniority of judges
New section 5 (1A)

insert

(1A) The President is senior to all the other judges except the Chief Justice.

5 Section 5 (4)

after

Chief Justice

insert

or the President

6 Section 5

renumber subsections when Act next republished under Legislation Act 2001

**7 Arrangement of business of court
Section 7**

omit

The

substitute

Subject to section 37G (Arrangement of business of Court of Appeal), the

**8 Exercise of jurisdiction
Section 8 (1) and (2)**

substitute

(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.

Section 9

- 1 (2) The rules of court may provide for the jurisdiction of the court
2 otherwise exercisable by a single judge to be exercised—
3 (a) by the master, in the cases and subject to the conditions
4 prescribed under the rules; or
5 (b) by the registrar, in the cases and subject to the conditions
6 prescribed under the rules.

7 **9 Exercise of jurisdiction by master**

8 **Section 9 (2) (b)**

9 *omit*

10 Full Court

11 *substitute*

12 Court of Appeal

13 **10 Section 9 (3) and (4)**

14 *omit*

15 subsection (2)

16 *substitute*

17 subsection (2) (a)

18 **11 Rules of court**

19 **Section 36 (2) (g)**

20 *omit*

21 proceedings.

22 *insert*

23 proceedings; and

12 New section 36 (2) (h)

insert

- (h) for the time of instituting appeals in the Court of Appeal, and how they are instituted.

13 New part 2A

after part 2, insert

Part 2A Court of Appeal

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));
 - (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);
 - (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.

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

4 **37F Appointment of President**

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

12 **37G Arrangement of business of Court of Appeal**

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

22 **37H Appeal bench**

- 23 (1) The Court of Appeal is constituted by 3 judges, except under the
24 following provisions:
- 25 • section 37J (Appeal court constituted by single judge)
 - 26 • section 37L (Appeal judge unable to continue sitting)
 - 27 • section 37O (2) (which provides for the execution of a
28 judgment).

1 (2) At least 1 of the judges sitting on the Court of Appeal must be a
2 resident judge, unless the President considers it impracticable for the
3 Court of Appeal to be so constituted.

4 (3) A judge must not sit on an appeal from a judgment made by the
5 judge.

6 **37I Presiding judge**

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

9 **37J Appeal court constituted by single judge**

10 (1) The Court of Appeal may be constituted by a single judge for
11 hearing and deciding any of the following matters (*incidental*
12 *matters*) in relation to an appeal:

- 13 (a) leave or special leave to appeal;
- 14 (b) extension of time to institute an appeal;
- 15 (c) leave to amend the grounds of an appeal;
- 16 (d) amendment or stay of a judgment of the court from which the
17 appeal is brought;
- 18 (e) suspension of the operation of a judgment to which the appeal
19 relates;
- 20 (f) joinder or removal of a party;
- 21 (g) a consent order disposing of the appeal (including an order for
22 costs);
- 23 (h) directions about the conduct of the appeal (including directions
24 about the use of written submissions and limiting the time for
25 oral argument).

26 (2) The rules may provide for incidental matters to be dealt with
27 without an oral hearing, subject to any conditions prescribed under
28 the rules.

1 **37K Decision-making**

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

5 **37L Appeal judge unable to continue sitting**

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

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

16 (2) If the parties do not agree to the continuation of the proceeding
17 before the 2 remaining judges, the appeal must be reheard and
18 decided by the Court of Appeal constituted by 3 judges ((including,
19 if practicable, the 2 remaining judges)).

20 (3) If the parties agree to the continuation of proceedings before the 2
21 remaining judges, and the remaining judges are divided in
22 opinion—

23 (a) if they are divided in opinion about the decision on the
24 appeal—the appeal must be reheard and decided by the Court
25 of Appeal constituted by 3 judges (including, if practicable, the
26 2 remaining judges); or

27 (b) if they are divided in opinion about any other issue—the
28 decision of the court is the decision of the most senior of the
29 remaining judges.

30 **37M Reserved judgments**

31 (1) If judgment is reserved in a proceeding before the Court of Appeal
32 after a full hearing, the judgment of the court (including the

1 judgment of 1 or more of the judges sitting on the court) may later
2 be delivered, orally or in writing, by any of the sitting judges.

3 (2) It is not necessary for the other judges sitting on the Court of Appeal
4 in the proceeding to be present when judgment is delivered.

5 **37N Evidence on appeal**

6 (1) The Court of Appeal must have regard to the evidence given in the
7 proceeding out of which the appeal arose.

8 (2) The Court of Appeal may draw inferences of fact from that
9 evidence.

10 (3) The Court of Appeal may receive further evidence in any of the
11 following ways:

12 (a) by oral examination before the court or a judge;

13 (b) on affidavit;

14 (c) by audiovisual link or audio link within the meaning of the
15 *Evidence (Miscellaneous Provisions) Act 1991*, section 14;

16 (d) any other way the court may receive evidence.

17 **37O Judgment on appeal**

18 (1) The Court of Appeal has the following powers in relation to the
19 judgment appealed from:

20 (a) to confirm, reverse or vary the judgment;

21 (b) to give any judgment it considers appropriate, or refuse to give
22 an order applied for;

23 (c) to set aside the judgment (completely or in part) and remit the
24 proceeding to the court constituted by a single judge for further
25 hearing and decision, subject to any directions the Court of
26 Appeal considers appropriate;

27 (d) to set aside a verdict or finding of a jury in a civil proceeding,
28 and enter judgment despite any jury verdict or finding;

- 1 (e) to set aside the verdict and judgment in a trial on indictment
2 and order a verdict of not guilty (or another verdict) to be
3 entered;
- 4 (f) to order a new trial, with or without jury, on any appropriate
5 ground;
- 6 (g) to award execution of any judgment, or remit the proceeding to
7 the court constituted by a single judge for execution of the
8 judgment.
- 9 (2) If a judgment of the Court of Appeal is remitted for execution under
10 subsection (1) (g), the court constituted by a single judge must
11 execute the judgment of the Court of Appeal as if it were that
12 judge's own judgment.
- 13 (3) The Court of Appeal may exercise powers under subsection (1) in
14 relation to the decision appealed from—
- 15 (a) despite any request in the notice of appeal that part only of the
16 decision be reversed or varied; and
- 17 (b) in favour of all or any of the respondents or other parties,
18 including any who have not appealed from or complained of
19 the decision.
- 20 (4) An interlocutory judgment from which there has been no appeal
21 does not prevent the Court of Appeal from giving any decision on
22 the appeal it considers just.
- 23 (5) In a criminal matter, the powers of the Court of Appeal in an appeal
24 against sentence (whether by the prosecution or defendant) include
25 the following powers:
- 26 (a) to increase or decrease the sentence;
- 27 (b) to substitute a different sentence.

28 **37P New trials**

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

- 1 (a) order that the new trial be conducted generally, or on particular
- 2 issues;
- 3 (b) impose any conditions that it considers appropriate;
- 4 (c) direct any admissions by a party that it considers appropriate;
- 5 (d) order that the testimony of a witness examined at the original
- 6 trial be used in the new trial in the way stated in the order.

7 **37Q Bail time on appeal does not count towards prison**
8 **sentence**

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

14 **37S Reference appeal following acquittal on indictment**

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

- 1 (6) The decision on the reference appeal does not invalidate or affect
2 any verdict or decision given at the trial.

3 **14 Completion of part-heard matters—expiration of term of**
4 **office**

5 **Section 60A (1) (b)**

- 6 *after*
7 him or her
8 *insert*
9 (including proceedings in the Full Court or the Court of Appeal)

10 **15 Acts amended consequentially—schedule 2**

- 11 *Schedule 2 (Consequential amendments of other Acts) amends the*
12 *Acts mentioned in that schedule.*

Schedule 1 Consequential and technical amendments of the Supreme Court Act 1933

(see s 3)

[1.1] Section 1

substitute

1 Name of Act

This Act is the *Supreme Court Act 1933*.

[1.2] Section 2, definitions of *acting judge*, *additional judge*, *Chief Justice* and *resident judge*

omit

[1.3] Section 2, remaining definitions

relocate to dictionary

[1.4] Section 2, remainder

omit

[1.5] New sections 2 and 2A

insert

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

Schedule 1 Consequential and technical amendments of the Supreme Court Act 1933

Amendment [1.6]

1 *entitlements* is defined in the dictionary to this Act, and the definition
2 applies to part 2B.

3 *Note 2* A definition in the dictionary (including a signpost definition) applies to
4 the entire Act unless the definition, or another provision of the Act,
5 provides otherwise or the contrary intention otherwise appears (see
6 *Interpretation Act*, s 11F and s 11G).

7 **2A Notes**

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

9 *Note* See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of
10 notes.

11 **[1.6] Section 4, heading**

12 *substitute*

13 **4 Resident judges**

14 **[1.7] Section 4 (2) (a) (i)**

15 *substitute*

16 (i) is or has been a judge of a superior court of record of the
17 Commonwealth or a State, or has been a judge of the
18 Supreme Court; or

19 **[1.8] Section 4 (3) to (7)**

20 *substitute*

21 (3) A resident judge ceases to hold office on attaining the age of 70
22 years.

23 (4) A resident judge may resign by written notice to the Attorney-
24 General.

[1.9] New section 4A

after section 4, insert

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.

[1.10] Section 4A, heading

substitute

4B Acting judges

[1.11] Section 4A (3) (a)

substitute

- (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

[1.12] Section 6

omit everything after

to do so

substitute

is to act as Chief Justice.

Schedule 1 Consequential and technical amendments of the Supreme Court Act
1933

Amendment [1.13]

1 **[1.13] Sections 9 (4) and 10 (3)**

2 *omit*

3 affirm

4 *substitute*

5 confirm

6 **[1.14] Section 14 (a)**

7 *omit*

8 shall be affirmed

9 *substitute*

10 is confirmed

11 **[1.15] Section 15 (1) (a)**

12 *omit*

13 motion

14 *substitute*

15 initiative

16 **[1.16] Section 34 (1)**

17 *before*

18 At any stage

19 *insert*

20 (1)

21 **[1.17] Section 34 (2)**

22 *omit*

23 the generality of

- 1 **[1.18] Part 2A**
- 2 *renumber as part 2B*
- 3 **[1.19] Section 37F (3)**
- 4 *omit*
- 5 , as in force from time to time,
- 6 **[1.20] Section 37F (3) (b)**
- 7 *after*
- 8 retired or died
- 9 *insert*
- 10 , had been appointed to that court on the date of his or her
- 11 appointment as a resident judge
- 12 **[1.21] Section 37F (3), new note**
- 13 *insert*
- 14 *Note* A reference to a Cwlth Act includes a reference to the Act as originally
- 15 made and as amended (see *Legislation Act 2001*, s 102).
- 16 **[1.22] Section 37G (1)**
- 17 *substitute*
- 18 (1) The remuneration and allowances of an acting judge are as
- 19 prescribed under the regulations.
- 20 **[1.23] Sections 37E to 37I**
- 21 *renumber as sections 37T, 37U, 37V, 37W and 37X*
- 22 **[1.24] Section 53A (3) and (6)**
- 23 *omit*
- 24 the generality of

Amendment [1.25]

[1.25] Section 55A (2)

omit

motion

substitute

initiative

[1.26] Section 61

substitute

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.

[1.27] Section 68D (3) (a)

omit

motion

substitute

initiative

[1.28] New dictionary

insert

Dictionary

(see s 2)

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

additional judge means a judge appointed under section 4A.

- 1 **Chief Justice** means the Chief Justice of the Supreme Court, and
2 includes a judge acting as Chief Justice.
- 3 **Court of Appeal** means the Supreme Court constituted as a Court of
4 Appeal under part 2A (Court of Appeal).
- 5 **entitlements**, for part 2B (Terms and conditions of judges)—see
6 section 37T.
- 7 **President** means the President of the Court of Appeal, appointed
8 under section 37F.
- 9 **resident judge** means the Chief Justice or another judge appointed
10 under section 4, and includes the judges (other than additional
11 judges) who continue to hold office under the *A.C.T. Self-*
12 *Government (Consequential Provisions) Act 1988* (Cwlth), section
13 29A.

**Schedule 2 Consequential amendments
of other Acts**

(see s 11)

**Part 2.1 Administrative Appeals
Tribunal Act 1989**

[2.1] Section 46 (6)

omit

If the Supreme Court or the Federal Court of Australia makes an order

substitute

If, on appeal, an order is made

Part 2.2 Bail Act 1992

[2.2] Section 9

substitute

9 Bail for persons sentenced to imprisonment

(1) This section applies if—

(a) a person has been convicted of an offence by a court and sentenced to a period of imprisonment for the offence; and

(b) an appeal is pending in relation to the conviction or sentence (including an appeal against a decision on appeal).

(2) Despite anything else in this Act, a court must not grant bail to the person unless it is satisfied that special or exceptional circumstances exist justifying the grant of bail.

Part 2.3 Coroners Act 1997

[2.3] Section 58 (4) (b) (ii) (A)

omit

determined

substitute

decided

[2.4] Section 58 (4) (b) (iv)

substitute

- (iv) if the person is convicted of the offence, and the director of public prosecutions has not given notice under subparagraph (ii) (A) that the proceedings are finally decided—30 days after the proceedings are finally decided.

Part 2.4 Financial Institutions Duty Act 1987

[2.5] Section 36 (2) (b)

substitute

- (b) the decision of any court on an appeal in relation to the tribunal's decision (including an appeal in relation to a decision on appeal);

Part 2.5 Rates and Land Tax Act 1926

[2.6] Section 33 (2) (b)

substitute

- (b) the decision of any court on an appeal in relation to the tribunal's decision (including an appeal in relation to a decision on appeal);

1 **Part 2.6** **Remuneration Tribunal Act**
2 **1995**

3 **[2.7] New section 10 (1) (aa)**

4 *insert*

5 (aa) the President of the Court of Appeal;

6 **[2.8] Section 10 (1)**

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

9 **[2.9] Section 10 (2) and (3)**

10 *substitute*

11 (2) Subsection (1) (a) and (aa) only authorise the tribunal to inquire into
12 and determine the remuneration and allowances to be paid, and
13 other entitlements to be granted, to the Chief Justice or the President
14 of the Court of Appeal in relation to that office in addition to any
15 remuneration, allowances and entitlements of the Chief Justice or
16 the President as a resident judge or a judge of the Federal Court.

17 (3) Subsection (1) (b) does not apply to—

18 (a) a resident judge of the Supreme Court who is also a judge of
19 the Federal Court; or

20 (b) a resident judge of the Supreme Court to whom the *Supreme*
21 *Court Act 1933*, section 37U applies; or

22 (b) an additional judge of the Supreme Court; or

23 (c) an acting judge of the Supreme Court.

Endnote

Supreme Court Act 1933

1 Republished as in force on 1 September 2000 (Republication No 6). See also
Act 2001 No 7.

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