



Australian Capital Territory

# Supreme Court Act 1933

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## **About this republication**

### **The republished law**

This is a republication of the *Supreme Court Act 1933* effective 30 November 1996 to 22 September 1997.

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Australian Capital Territory  
**SUPREME COURT ACT 1933**

This consolidation has been prepared by the ACT Parliamentary Counsel's Office  
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Australian Capital Territory  
**SUPREME COURT ACT 1933**

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

**PART I—PRELIMINARY**

**Short title**

1. This Act may be cited as the *Supreme Court Act 1933*.<sup>1</sup>

**Interpretation**

2. In this Act, unless the contrary intention appears—
  - “acting Judge” means an acting Judge appointed under subsection 4A (1);
  - “additional Judge” means a Judge appointed under subsection 4 (3);
  - “cause” includes any suit, and also includes criminal proceedings;
  - “Chief Justice” means the Chief Justice of the Court, and includes a Judge for the time being performing the duties and exercising the powers of the Chief Justice;
  - “Court” means the Supreme Court;
  - “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;
  - “Full Court” means the Court constituted by not less than 3 Judges sitting together;
  - “Judge” means a resident Judge, additional Judge or acting Judge;

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- “judgment” includes any decree, order or sentence;
- “Judicature Act” means the *Supreme Court of Judicature Act 1873* (36 & 37 Vic., Cap. 66) of the United Kingdom;
- “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 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 subsection 4 (1) and includes the Judges (other than additional Judges) who continue to hold office pursuant to section 29A of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth;
- “Sheriff” means the Sheriff of the Territory;
- “suit” includes any action or original proceeding between parties of a civil nature.

**PART II—CONSTITUTION AND JURISDICTION OF THE SUPREME COURT**

**Establishment**

- 3. (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.

### **Appointment and tenure of Judges**

**4. (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, a State or a Territory; or

(ii) has been enrolled for not less than 5 years as a legal practitioner of the High Court or of the Supreme Court of a State or Territory; or

(b) if he or she has attained the age of 70 years.

**(3)** The Executive may, by commission, appoint a Judge or Judges of a superior court of record of the Commonwealth, a State or another Territory as an additional Judge or additional Judges of the Court.

**(4)** A resident Judge ceases to hold office on attaining the age of 70 years.

**(5)** 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, a State or another Territory.

**(7)** A Judge may resign from office by written notice to the Attorney-General.

### **Acting Judges—appointment and tenure**

**4A. (1)** The Executive may, by commission, appoint persons to be acting Judges of the Court.

**(2)** An appointment under subsection (1) shall be for such period, not exceeding 12 months, as is 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, a State or a Territory; or

(b) has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years.

### **Seniority of Judges**

**5. (1)** The Chief Justice is the senior Judge of the Court.



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(2) The resident Judges are senior to the additional Judges and the acting Judges.

(3) The additional Judges are senior to the acting Judges.

(4) The resident Judges (other than the Chief Justice) have seniority as between themselves—

(a) according to the dates on which 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.

(5) The additional Judges have seniority as between themselves—

(a) according to the dates on which 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 acting Judges have seniority as between themselves—

(a) according to the dates on which 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.

**Acting Chief Justice**

6. 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 shall perform the duties, and may exercise the powers, of the Chief Justice.

**Arrangement of business of Court**

7. 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.

**Exercise of jurisdiction**

**8. (1)** Subject to subsection (2) and sections 9, 10, 11, 12 and 13, the jurisdiction of the Court is exercisable by a single Judge.

**(2)** Provision may be made by Rules of Court for the jurisdiction of the Court that is exercisable in accordance with subsection (1) to be exercisable:

- (a) in such cases, and subject to such conditions, as are specified in the Rules of Court, by the Master; and
- (b) in such cases, and subject to such conditions, as are specified in the Rules of Court, by the Registrar.

**(3)** In this section, “Registrar” does not include a Deputy Registrar.

**Exercise of jurisdiction by Master**

**9. (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) in the case of an interlocutory judgment—to the Court constituted by a single Judge; and
- (b) in the case of any other judgment—to the Full Court.

**(3)** On an appeal under subsection (2), 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;
    - (B) by oral examination before the Court or a Judge; or
    - (C) otherwise under section 57.

**(4)** On an appeal under subsection (2), the Court may affirm, vary or set aside the judgment of the Master and may make such order as in all the circumstances it considers just.

**Exercise of jurisdiction by Registrar**

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**10. (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 affirm, vary or set aside the order of the Registrar and may make such order as in all the circumstances it considers just.

**Exercise of jurisdiction—legal practitioners**

**11. (1)** The jurisdiction of the Court in an application for admission to practise as a barrister and solicitor 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 Division 3 of Part V of the *Legal Practitioners Act 1970* shall, as regards—

- (a) a finding whether the conduct of a legal practitioner has been such as to justify it making an order under subsection 41 (1) or exercising a power under subsection 41 (2) of that Act; 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 pursuant to that subsection.

**Exercise of jurisdiction under subsections 46 (4) and 48 (2) of the *Administrative Appeals Tribunal Act 1989***

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**12. (1)** The jurisdiction conferred by subsection 46 (4) of the *Administrative Appeals Tribunal Act 1989*:

- (a) may be exercised by the Full Court; and
- (b) shall be so exercised if:
  - (i) the Administrative Appeals Tribunal's decision was given by the Tribunal constituted by a member who was, or by members at least 1 of whom was, a presidential member other than a Judge; and
  - (ii) after consulting the President, the Chief Justice considers that it is appropriate for the appeal from the decision to be heard and determined by the Full Court; and
- (c) shall be so exercised if the Administrative Appeals Tribunal's decision was given by the Tribunal constituted by a member who was, or by members at least 1 of whom was, a Judge.

**(2)** The jurisdiction conferred by subsection 48 (2) of the *Administrative Appeals Tribunal Act 1989* shall be exercised by the Full Court if, after consulting the President, the Chief Justice considers that it is appropriate to do so.

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

**13. (1)** This section applies in relation to matters in which, but for this section, the jurisdiction of the Court would be exercisable by a single Judge.

**(2)** At any time before the commencement 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 commencement 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.

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

**14.** 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) in a case where a judgment of the Master is called in question—the judgment shall be affirmed; and
- (b) in any other case—the opinion of the senior Judge sitting prevails.

**Exercise by Court of powers of Master**

**15. (1)** Where 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 motion 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)** Where, under subsection (1), proceedings are referred or removed to the Court constituted by a single Judge, the Court may:

- (a) give such directions as it considers appropriate as to the procedure to be followed in the further conduct of the proceedings, including, in a case where 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 such directions as the Court considers appropriate.

**Holding other judicial offices**

**16. (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—

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- (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.

**Remuneration of Judges**

**17. (1)** The resident Judges are to receive remuneration and allowances under section 73 of the *Australian Capital Territory (Self-Government) Act 1988* of the Commonwealth.

(2) An acting Judge shall be paid such remuneration and allowances as are prescribed by regulation.

(3) Subsection (2) does not apply to—

- (a) the remuneration of an acting Judge if there is a subsisting determination of the Commonwealth Remuneration Tribunal relating to the remuneration to be paid to the acting Judge; or
- (b) an allowance of a particular kind in respect of an acting Judge if there is a subsisting determination of the Commonwealth Remuneration Tribunal relating to an allowance of that kind to be paid to the acting Judge.

(3A) The remuneration and allowances to which a Judge is entitled accrue from day to day and are payable monthly.

(4) The public money of the Territory is appropriated to the extent necessary for payment to Judges of remuneration and allowances.

(5) Subject to subsection (6), a Judge is not entitled to remuneration or allowances if—

- (a) he or she concurrently holds office as a Judge of a superior court of record of the Commonwealth, a State or another Territory; and
- (b) the Judge is entitled to remuneration or allowances (as the case requires) in respect of the concurrently held office.

(6) Where the amount of remuneration or allowances to which a Judge would be entitled as a Judge of the Court if subsection (5) did not apply exceeds the remuneration or allowances (as the case may be) to which he or she is

entitled as a Judge of another superior court of record, the Judge is entitled to receive an additional amount equal to that excess.

**Principal seat of court and sittings**

**18. (1)** The Court may sit at Canberra, and at such other places in Australia as 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.

**Oath or affirmation of office—Judges**

**19.** Before proceeding to perform the functions of office, a Judge shall take an oath or affirmation in accordance with Form 1 in the Schedule before another Judge, a Justice of the High Court or a Judge of the Federal Court.

**Jurisdiction and powers of the Supreme Court**

**20.<sup>3</sup> (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 where it has concurrent jurisdiction with another court or tribunal.

**Distinction between court and chambers**

**21. (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.

**Trial by jury in civil proceedings**

**22. (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.

### **Costs**

**23. (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 which would otherwise be followed in any criminal cause or matter or in proceedings on the Crown side of the Court.

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

**24.** 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.

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

**25.** Subject to the express provisions of any other Act, in every civil cause or matter commenced in the Court law and equity shall be administered according to sections 26 to 32 (inclusive).

### **Equities of plaintiff**

**26.** In proceedings in the Court, the plaintiff is entitled to equitable relief where, in pre-Judicature Act proceedings of the same type, the plaintiff would have been entitled to such relief.

### **Equities of defendant**

**27.** 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) where, 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.

### **Counter-claims and third parties**

**28. (1)** In proceedings in the Court, the defendant is entitled to relief (whether at law or in equity)—

- (a) against the plaintiff, where the relief claimed would have been granted to the defendant if he or she had taken out a separate suit against the plaintiff; or



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- (b) against a person other than the plaintiff, where—
- (i) the relief claimed relates to the subject matter of the proceedings;
  - (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) Where a person is duly served with a notice referred to in subparagraph (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.

**Incidental equities**

29. 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.

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

30. (1) No proceedings at any time pending in the Court shall be restrained by prohibition or injunction.

(2) A defence is available in proceedings where, 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) Upon 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—

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- (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.

**Common law and statute**

**31.** 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.

**Final determination of matters**

**32. (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 the purposes of subsection (1), the Court may grant legal or equitable relief absolutely or conditionally.

**Law and equity**

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

**Injunctions**

**34.** 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 the generality of 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;
- (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.

### **Receivers**

**34A.** 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.

### **Prerogative remedies**

**34B. (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.

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

**35.** 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.

### **Rules of Court**

**36. (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;
- (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;
- (c) for prescribing the qualifications for the admission of persons to practise as barristers and solicitors of the Court; and

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- (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;
  - (b) for the service and execution of the process of the Court including the manner in which and the extent to which the process of the Court may be served and executed out of the jurisdiction of the Court;
  - (c) for the execution of the judgments of the Court;
  - (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;
  - (e) for the issue by the Court of letters of request for the service in any foreign country of any process of the Court;
  - (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.
- (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;
  - (b) the appointment of a Judge, the Master, the Registrar or other officer of the Court or other person as an arbitrator or referee;
  - (c) the fees to be paid to an arbitrator or referee;
  - (d) the persons by whom such a fee, or part of such a fee, is payable;
  - (e) the consequences of a determination or report by an arbitrator or referee;
  - (f) the manner in which a determination or report may be called in question;
  - (g) whether or not, or to what extent, a determination or report may be called in question on a matter of fact or law;

- (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.

**Fees and charges—determination**

**37. (1)** The Attorney-General may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- (a) proceedings in the Court, and matters incidental to such proceedings, including—
  - (i) the admission and enrolment of barristers and solicitors;
  - (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, the Regulations or the Rules of Court.

**(2)** A determination under subsection (1) may provide for any of the following matters:

- (a) the exemption of persons from liability to pay filing fees or fees for the service and execution of process, in whole or in part;
- (b) exemptions from liability for the payment of filing fees or fees for the service and execution of process, 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 for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**Fees and charges—payment**

**37A. (1)** A fee or charge determined under subsection 37 (1) is payable, in advance, in accordance with the determination, subject to this section.

(2) A fee or charge determined under subsection 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.

(3) If a fee or charge determined under subsection 37 (1) and payable in advance is not paid when due, there is no obligation on the Registrar or the Court to perform the function, or provide the facility or service, for which the fee or charge is payable.

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

**37B. (1)** A fee or charge determined under subsection 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 subsection 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 subsection 93 (1) of the *Legal Aid Act 1977*; or
    - (ii) legally assisted under a scheme or service provided or approved by the Attorney-General;
  - (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 filing a document, or for the service or execution of process, in relation to proceedings—
    - (i) in a criminal matter, including an appeal;
    - (ii) under the *Coroners Act 1956*;
    - (iii) under Part VIII of the *Legal Practitioners Act 1970*;
    - (iv) under Part X of the *Magistrates Court Act 1930*;
    - (v) under any of the following Acts:
      - (A) the *Adoption Act 1993*;
      - (B) the *Children’s Services Act 1986*;
      - (C) the *Criminal Injuries Compensation Act 1983*;
      - (D) the *Domestic Violence Act 1986*;
      - (E) the *Guardianship and Management of Property Act 1991*;

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- (F) the *Maintenance Act 1968*;
- (G) the *Mental Health (Treatment and Care) Act 1994*;
- (H) the *Testamentary Guardianship Act 1984*;
- (vi) on appeals in respect of the following matters:
  - (A) a matter under the *Children’s Services Act 1986*;
  - (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 section 44 of the *Judiciary Act 1903* of the Commonwealth;
- (viii) in respect of 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 commenced.

**Fees and charges—recovery where otherwise not payable**

**37C. (1)** This section applies in civil proceedings in the Court between 2 parties (in this section called “the first party” and “the second party”), where—

- (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 paragraph 37 (2) (a) or (b) or 37B (2) (a);
  - (ii) remitted or refunded (in whole or in part) under subsection 37B (1); or
  - (iii) the subject of waiver (in whole or in part) under paragraph 37B (2) (b);
- (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)** Where 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.

**Fees and charges—review of decisions**

**37D. (1)** The following decisions of the Registrar are reviewable under this section:

- (a) a decision referred to in paragraph 37 (2) (c) in relation to the remission or refund of a fee or charge (in whole or in part);
- (b) a decision referred to in paragraph 37 (2) (d) in relation to the deferral of liability for the payment of a fee or charge (in whole or in part);
- (c) a decision under paragraph 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 such order as 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) the period of 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—the period of 28 days after he or she receives the statement of reasons.



## **PART III—THE MASTER**

### **The Master**

**38.** There shall be a Master of the Court.

### **Powers and duties of Master**

**39. (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.

### **Appointment of Master**

**40. (1)** The Master shall be appointed by the Executive.

**(2)** A person shall not be appointed as the Master unless the person has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years.

**(3)** A person who has attained 70 years of age shall not be appointed as the Master.

### **Term of office**

**41. (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 re-appointment; or
  - (ii) if the instrument of appointment so provides, until attaining 70 years of age.

**(2)** Subparagraph (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.

### **Extension of term of office**

**41A. (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.

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

**41B.** 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.

### **Holding other offices**

**41C. (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.

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

**42.** Before proceeding to perform the functions of office, the Master shall take an oath or affirmation in accordance with Form 1 in the Schedule before a Judge.

### **Resignation**

**43.** The Master may resign by writing signed and delivered to the Attorney-General.

### **Retirement**

**44.** The Executive may, with the consent of the Master if he or she is—

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

retire the Master from office on the ground of invalidity.

### **Acting appointments**

**45. (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 paragraph (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 and the Rules of Court) apply in relation to the person as if the person were the Master.

**(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;
- (b) there was a defect or irregularity in connection with the appointment;  
or
- (c) the appointment had ceased to have effect.

## **PART IV—OFFICERS**

### **Appointment**

**46. (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.

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(2) The Registrar and the Sheriff shall be appointed by the Attorney-General.

(3) The Deputy Registrars and the other officers referred to in paragraph (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.

**Acting appointments**

**46A. (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;
- (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.

**Staff assisting the Registrar**

**46B. (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.

**Functions of Registrar and Deputy Registrars**

**47. (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.

**Oath or affirmation of office—Registrar**

**48.** The Registrar shall, before a Judge, take an oath or affirmation in accordance with Form 2 in the Schedule before proceeding to perform the functions of the office.

**Proceedings before Registrar in relation to winding-up of companies**

**49. (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;
- (b)** the Master and the Registrar have all the powers of the Court in relation to the winding-up;
- (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.

**Functions of Sheriff**

**50.** The Sheriff shall—

- (a)** serve or execute any process of the Court directed to him or her;
- (b)** make due return to the Court of such process;
- (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 law of the Territory.

### **Deputy Sheriffs**

**51. (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.

### **Process of the Court where Sheriff or Deputy Sheriff is interested party**

**52. (1)** Where the Sheriff or a Deputy Sheriff is a party to a cause in the Court, any process of the Court in the cause which 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).

### **Sheriff's assistants**

**53. (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.

## **PART V—GENERAL MATTERS OF PROCEDURE**

### **Manner of giving evidence**

**54.** 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.

**Evidence by affidavit**

**55. (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 solicitor, 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.

**Appearance by barrister or solicitor**

**56.** A party in a cause or matter may appear before the Court either personally or by a barrister or solicitor having the right to practise in the Court.

**Orders and commissions for examination of witnesses**

**57.** 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 upon 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;
- (b) order a commission or letters of request to be issued to take evidence;
- (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.

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

**58. (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.

**Amendment of defects**

**59. (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.

**Formal defects to be amended**

**60. (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.

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

**60A. (1)** This section applies where—

- (a) a Judge or the Master would, but for 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 but had not been finally determined.

**(2)** Where 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.



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(3) Where 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 such proceedings, is a valid and effectual exercise of the Court's jurisdiction, and may be enforced accordingly.

(5) This section does not apply where a Judge or the Master ceases to hold office by reason of his or her removal from office.

(6) In this section—

“transitional proceedings” means proceedings referred to in paragraph (1) (b).

**Reserved judgments**

61. (1) Where any proceeding, after being fully heard before the Full Court, is ordered to stand for judgment, it is not necessary that all the Judges before whom it was heard be present together in Court to declare their opinions on the matter to which the proceedings relate, but the opinion of any 1 of them may be reduced to writing and may be made public by any other of them at any subsequent sitting of the Court at which judgment in the proceeding is delivered.

(2) In any such case the question shall be decided in the same manner, and the judgment of the Court has the same force and effect, as if the Judge whose opinion is so made public had been present in court and had declared his or her opinion in person.

**Change of venue**

63. (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 subsection 18 (1) and to such conditions as are 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 subsection 18 (1).

**Seal**

64. (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”.

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(2) The Seal of the Court shall be kept in such custody as the Chief Justice directs.

**Use of Seals**

65. All writs, commissions and process issued from the Court are to be—
- (a) in the name of the Crown;
  - (b) under the Seal of the Court or such other seal as is prescribed by Rules of Court; and
  - (c) signed by the Registrar or an officer authorised by the Registrar.

**Date of process**

66. All writs and process issued from the Court shall be dated as of the day on which they are issued.

**Oaths and affirmations**

67. (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 such as are 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.

**PART VII—TRIAL ON INDICTMENT**

**Prosecution of indictable offences**

68. (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 such other person as the Attorney-General, by instrument in writing, appoints for the purposes of this subsection.

(2) The Attorney-General may file an information under subsection (1) without examination or commitment for trial of the accused person.

(3) Upon 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) Where a person has been committed for trial upon 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 are such as may lawfully be joined in a single information.

(6) Where a person is under commitment upon a charge of an indictable offence triable before the Court, the Attorney-General, or such other person as the Attorney-General, by instrument, appoints for the purposes of 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.

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

**68A.** Criminal proceedings shall be tried by a jury, except as otherwise provided by this Part.

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

**68B. (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;
- (b) the accused person produces a certificate signed by a barrister or solicitor 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;
- (c) the election is made before the Court first allocates a date for the person's trial; and
- (d) where 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 respect of 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.

### **Verdict of Judge in criminal proceedings**

**68C. (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 law of the Territory 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 VIII—SUMMARY OFFENCES RELATED TO INDICTABLE OFFENCES**

### **Related summary offences**

**68D. (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 motion;
- (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.

### **Procedure**

**68E. (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.

### **Remission of related offences to Magistrates Court**

**68F.** The Court may, at any time, remit a related summary offence being dealt with under this Part to the Magistrates Court.

## **PART IX—MISCELLANEOUS**

### **Interest up to judgment**

**69. (1)** In any proceedings for the recovery of any money (including any debt or damages or the value of any goods) the Court shall, upon 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;
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of an agreement or otherwise; or
- (c) affect the damages recoverable for the dishonour of a bill of exchange.

(3) Where the sum for which judgment is given (in this subsection referred to as the “relevant sum”) includes, or where the Court determines that the relevant sum includes, any amount for—

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- (a) compensation in respect of liabilities incurred which do not carry interest as against the person claiming interest or claiming a sum in lieu of interest;
- (b) compensation for loss or damage to be incurred or suffered after the date on which 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.

**Interest on judgments**

**70.** A judgment debt under a judgment of the Court carries interest at such rate as is fixed by the Rules of Court from the date as of which the judgment is entered.

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

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

**Duty of receiver and manager**

**73.** 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 manner in which the owner or possessor would be bound to do if in possession.

**Liability and protection of receivers and managers**

**74.** A receiver or manager of any property appointed by the Court may, without the previous leave of the Court, be sued in respect of any act or transaction in carrying on the business connected with the property.

**Regulations**

**75.** The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for giving effect to this Act.
-

**SCHEDULE**

Sections 19, 42 and 48

**OATHS AND AFFIRMATIONS OF OFFICE**

***Form 1—Chief Justice, Judges and Master***

**Oath**

“I, \_\_\_\_\_, do swear that I 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 I will do right to all manner of people according to law, without fear or favour, affection or ill-will, so help me God.”

**Affirmation**

“I, \_\_\_\_\_, do solemnly and sincerely affirm that I 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 I will do right to all manner of people according to law, without fear or favour, affection or ill-will.”

\* State whichever is applicable.

***Form 2—Registrar***

**Oath**

“I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second and Her Heirs and Successors, and that I 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**

“I, \_\_\_\_\_, do solemnly and sincerely affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second and Her Heirs and Successors, and that I will well and truly serve Her in the office of Registrar of the Supreme Court of the Australian Capital Territory.”

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### NOTES

1. The *Supreme Court Act 1933* as shown in this reprint comprises Act No. 34, 1933 of the Commonwealth (as amended).

The *Australian Capital Territory (Self-Government) Act 1988* (No. 106, 1988) of the Commonwealth subsection 34 (2) and Schedule 2 allowed for the conversion of certain Commonwealth laws (including that first-mentioned Act) to Territory enactments.

The *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth was, in preparation for its conversion, amended by the *Supreme Court (Transfer) Act 1992* (No. 49, 1992) of the Commonwealth with effect from 1 July 1992 and, as so amended became a Territory enactment on that date. A Table showing new section numbers after renumbering by the last-mentioned Act is located after the Notes.

For the amendment history of the Australian Capital Territory Supreme Court Act of the Commonwealth see Commonwealth Acts Tables and Commonwealth Acts of the Parliament Volumes printed annually. A Table showing the amendment history as provided by the Commonwealth as at 1 July 1992 is located at the back of this reprint for the reader's convenience.

The *Supreme Court Act 1933* was also amended by the Self-Government (Transitional Provisions) Regulations as amended. The amendment is incorporated in this reprint.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most ACT laws so that after Self-Government day, or when they become Territory enactments they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

### Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Supreme Court (Amendment) Act 1993</i>	59, 1993	6 Sept 1993	6 Sept 1993	S. 7
<i>Supreme Court (Amendment) Act (No. 2) 1993</i>	91, 1993	17 Dec 1993	17 Dec 1993	Ss. 8 (2), 16 (2), 20 (2) and 22 (2)
<i>Legal Practitioners (Amendment) Act 1993</i>	94, 1993	24 Dec 1993	24 Dec 1993	—
<i>Supreme Court (Amendment) Act 1994</i>	3, 1994	14 Mar 1994	14 Mar 1994	S. 5
<i>Judicial Commissions (Consequential Amendments) Act 1994</i>	10, 1994	14 Mar 1994	14 Mar 1994	—



Supreme Court Act 1933

NOTES—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Mental Health (Consequential Provisions) Act 1994</i>	45, 1994	7 Sept 1994	Ss. 1 and 2: 7 Sept 1994 Remainder: 6 Feb 1995 (see s. 2 (2) and <i>Gazette</i> 1995, No. S33, p. 2)	—
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—
<b>(Reprinted as at 28 February 1995)</b>				
<i>Statute Law Revision Act 1995</i>	46, 1995	18 Dec 1995	18 Dec 1995	—
<i>Financial Management and Audit (Consequential and Transitional Provisions) Act 1996</i>	26, 1996	1 July 1996	1 July 1996	—

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**NOTES**—continued

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 2	am. Nos. 59 and 91, 1993; No. 60, 1994
S. 3	am. No. 91, 1993
S. 4	am. No. 91, 1993; No. 10, 1994
S. 4A	ad. No. 91, 1993
S. 5	am. No. 91, 1993
Ss. 8-10	am. No. 91, 1993
S. 11	rs. No. 91, 1993 am. No. 94, 1993
S. 12	am. No. 91, 1993; No. 60, 1994
Ss. 13-16	am. No. 91, 1993
S. 17	am. No. 91, 1993; No. 26, 1996
S. 18	am. No. 91, 1993
S. 19	rs. No. 91, 1993
S. 20	am. No. 91, 1993
S. 21	rs. No. 91, 1993
Ss. 22-25	am. No. 91, 1993
Ss. 26-33	rs. No. 91, 1993
S. 34	rs. No. 91, 1993
Ss. 34A, 34B	ad. No. 91, 1993
S. 35	rs. No. 91, 1993
S. 36	am. No. 91, 1993
S. 37	am. Regulations 1990 No. 1 (as am. by No. 10, 1993) rs. No. 3, 1994
S. 37A	ad. No. 3, 1994
S. 37B	ad. No. 3, 1994 am. No. 45, 1994; No. 46, 1995
Ss. 37C, 37D	ad. No. 3, 1994
Ss. 39-41	am. No. 91, 1993
Ss. 41A-41C	ad. No. 91, 1993
S. 42	rs. No. 91, 1993
S. 44	rs. No. 10, 1994
S. 45	am. No. 10, 1994
S. 46	am. No. 91, 1993
S. 46A	ad. No. 91, 1993
S. 46B	ad. No. 38, 1994
Ss. 47, 48	rs. No. 91, 1993
S. 49	am. No. 91, 1993
Ss. 50-52	rs. No. 91, 1993
Ss. 53-58	am. No. 91, 1993
S. 59	rs. No. 91, 1993
S. 60	am. No. 91, 1993
S. 60A	ad. No. 91, 1993
S. 61	am. No. 91, 1993
S. 62	rep. No. 91, 1993
S. 63	rs. No. 91, 1993
S. 64	am. No. 91, 1993
S. 65	rs. No. 91, 1993
S. 66	am. No. 91, 1993

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**NOTES—continued**

**Table of Amendments—continued**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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Provision	How affected
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S. 67 .....	rs. No. 91, 1993
Heading to Part VII .....	rs. No. 59, 1993
S. 68 .....	am. No. 91, 1993
Ss. 68A-68C .....	ad. No. 59, 1993
Part VIII (ss. 68D-68F) .....	ad. No. 59, 1993
Ss. 68D-68F .....	ad. No. 59, 1993
Heading to Part IX .....	ad. No. 59, 1993
S. 69 .....	am. No. 91, 1993
S. 71 .....	am. No. 91, 1993
S. 72 .....	rep. No. 91, 1993
Ss. 73, 74 .....	am. No. 91, 1993
S. 75 .....	rs. No. 91, 1993
Schedule .....	ad. No. 91, 1993

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3. S. 20—The Court of the Australian Capital Territory has jurisdiction in the Australian Antarctic Territory and in Heard Island and McDonald Islands; see section 10 of the *Australian Antarctic Territory Act 1954* and section 9 of the *Heard Island and McDonald Islands Act 1953*.

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TABLE SHOWING NEW SECTION NUMBERS OF THE *SUPREME COURT ACT 1933* AFTER  
RENUMBERING BY THE *A.C.T. SUPREME COURT (TRANSFER) ACT 1992* (No. 49, 1992)  
OF THE COMMONWEALTH

**NOTE—This Table does not form part of the *Supreme Court Act 1933* and is printed for  
convenience of reference only.**

Old number	New number	Old number	New number	Old number	New number
Section	Section	Section	Section	Section	Section
5	2	20	28	37A	52
6	3	21	29	37B	53
7	4	22	30	38	54
7AA	5	23	31	39	55
7A	6	24	32	40	56
7B	7	25	33	41	57
8AAA	9	26	34	42	58
8AAB	10	27	35	43	59
8AA	11	28	36	44	60
8AABA	12	29	37	44A	61
8AB	13	30	38	45	62
8AC	14	31	39	46	63
8AD	15	32	40	47	64
8A	16	33	41	48	65
8B	17	33A	42	49	66
9	18	33C	43	50	67
10	19	33D	44	53	68
11	20	33F	45	53A	69
12	21	34	46	54	70
14	22	35	47	55	71
15	23	35AA	48	56	72
16	24	35A	49	57	73
17	25	36	50	58	74
18	26	37	51	59	75
19	27				

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TABLE SHOWING SECTION HISTORY OF THE *SUPREME COURT ACT 1933* AS PROVIDED BY THE COMMONWEALTH

The *Australian Capital Territory Supreme Court Act 1933* was modified by the A.C.T. Self-Government (Consequential Provisions) Regulations as amended. The modifications cease to have effect by the *A.C.T. Supreme Court (Transfer) Act 1992* and do not appear in the Table below.

**NOTE—This Table does not form part of the *Supreme Court Act 1933* and is printed for convenience of reference only.**

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
Title .....	am. No. 98, 1971
S. 1 .....	am. No. 80, 1950; No. 49, 1992
S. 2.....	rs. No. 51, 1959 am. No. 109, 1964 rep. No. 216, 1973
S. 3 .....	am. No. 216, 1973; No. 158, 1976; No. 61, 1981 rep. No. 49, 1992
S. 4 .....	rep. No. 216, 1973
S. 5 .....	am. No. 27, 1935; No. 57, 1945; No. 34, 1957; No. 43, 1958; No. 109, 1964; No. 156, 1968; Nos. 13 and 98, 1971; No. 216, 1973; No. 158, 1976; No. 26, 1982; Nos. 38 and 109, 1988; No. 49, 1992
S. 6 .....	am. No. 43, 1958; Nos. 13 and 98, 1971; No. 158, 1976; No. 26, 1982
S. 7.....	rs. No. 43, 1958 am. No. 156, 1968; Nos. 13 and 98, 1971; No. 216, 1973; No. 158, 1976; No. 26, 1982; No. 49, 1992
S. 7AA.....	ad. No. 109, 1988 rs. No. 49, 1992
Ss. 7A, 7B.....	ad. No. 158, 1976 am. No. 26, 1982
S. 8 .....	am. No. 57, 1945; No. 47, 1956 rs. No. 43, 1958 am. No. 156, 1968; No. 13, 1971 rs. No. 98, 1971 am. No. 158, 1976 rs. No. 38, 1988 am. No. 49, 1992
Ss. 8AAA, 8AAB .....	ad. No. 38, 1988
S. 8AA.....	ad. No. 156, 1968 am. Nos. 13 and 98, 1971; No. 158, 1976 rs. No. 115, 1990
S. 8AABA.....	ad. No. 49, 1992
S. 8AB.....	ad. No. 98, 1971 am. No. 158, 1976
S. 8AC .....	ad. No. 98, 1971 am. No. 158, 1976; No. 38, 1988; No. 49, 1992
S. 8AD .....	ad. No. 38, 1988
S. 8A.....	ad. No. 57, 1945 rs. No. 34, 1957; No. 43, 1958; No. 109, 1964 am. No. 216, 1973; No. 49, 1992

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**Table of Amendments—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 8B	ad. No. 57, 1945 am. No. 52, 1947; No. 65, 1948; No. 51, 1950; No. 17, 1955; No. 43, 1958; No. 110, 1960; No. 92, 1965; No. 93, 1966; No. 40, 1969; No. 13, 1971 rs. No. 158, 1976 am. No. 26, 1982; No. 49, 1992
S. 9	am. No. 49, 1992
S. 10	am. No. 43, 1958; No. 158, 1976; No. 176, 1981 (as am. by No. 80, 1982); No. 26, 1982; No. 49, 1992
S. 11	rs. No. 34, 1957 am. No. 158, 1976; No. 61, 1981; No. 109, 1988 rs. No. 49, 1992
S. 12	am. No. 34, 1957; No. 156, 1968; No. 109, 1988
S. 13	am. No. 156, 1968; No. 98, 1971 rep. No. 158, 1976
S. 15	am. No. 34, 1957; No. 109, 1988
S. 16	am. No. 80, 1950
S. 17	am. No. 158, 1976
S. 20	am. No. 34, 1957; No. 109, 1988
S. 23	am. No. 216, 1973
S. 27	rs. No. 34, 1957 am. No. 109, 1988
S. 28	am. No. 80, 1950; No. 34, 1957; No. 156, 1968; No. 98, 1971; No. 216, 1973; No. 158, 1976; No. 3, 1978; No. 92, 1981; No. 26, 1982; No. 168, 1986; Nos. 99 and 108, 1988; No. 49, 1992
Part III (ss. 29-33)	rep. No. 51, 1959
S. 29	rep. No. 51, 1959 ad. No. 3, 1978
Part III (ss. 30-33, 33A-33F)	ad. No. 38, 1988
S. 30	rep. No. 51, 1959 ad. No. 38, 1988
S. 31	rep. No. 51, 1959 ad. No. 38, 1988 am. No. 109, 1988
S. 32	rep. No. 51, 1959 ad. No. 38, 1988 am. No. 49, 1992
S. 33	rep. No. 51, 1959 ad. No. 38, 1988
S. 33A	ad. No. 38, 1988
S. 33B	ad. No. 38, 1988 rep. No. 49, 1992
S. 33C	ad. No. 38, 1988 am. No. 49, 1992
S. 33D	ad. No. 38, 1988
S. 33E	ad. No. 38, 1988 rep. No. 49, 1992
S. 33F	ad. No. 38, 1988 am. No. 49, 1992

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**Table of Amendments—continued**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 34 .....	am. No. 34, 1957 rs. No. 109, 1964 am. No. 98, 1971; No. 109, 1988
S. 35 .....	rs. No. 34, 1957 am. No. 156, 1968; No. 91, 1983; Nos. 38 and 109, 1988
S. 35AA.....	ad. No. 49, 1992
S. 35A.....	ad. No. 156, 1968 am. No. 38, 1988; No. 136, 1991
S. 37A.....	ad. No. 109, 1964 am. No. 109, 1988
S. 37B.....	ad. No. 49, 1992
S. 38 .....	rs. No. 98, 1971 am. No. 109, 1988
S. 39 .....	am. No. 34, 1957 rs. No. 98, 1971
S. 40 .....	rs. No. 8, 1966
S. 44A.....	ad. No. 176, 1981
S. 47 .....	am. No. 98, 1971; No. 158, 1976; No. 26, 1982
S. 50 .....	am. No. 34, 1957; No. 49, 1992
Part VI (ss. 51, 52).....	rep. No. 158, 1976
S. 51 .....	am. No. 36, 1955; No. 34, 1957; No. 93, 1966; No. 156, 1968 rep. No. 158, 1976
S. 52 .....	rs. No. 109, 1964 rep. No. 158, 1976
S. 53 .....	rs. No. 34, 1957 am. No. 176, 1981; No. 114, 1983; No. 49, 1992
S. 53A.....	ad. No. 176, 1981
S. 54 .....	am. No. 93, 1966 rs. No. 158, 1976
S. 55 .....	am. No. 98, 1971; No. 216, 1973; No. 49, 1992
S. 59 .....	am. No. 109, 1964
S. 60 .....	rep. No. 216, 1973
Heading to Schedules.....	rep. No. 65, 1985
First Schedule.....	rep. No. 80, 1950
Second Schedule.....	rep. No. 51, 1959

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