



Australian Capital Territory

# **Supreme Court Act 1933**

**A1933-34**

**Republication No 21**

**Effective: 22 December 2005 – 27 February 2006**

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Last amendment made by A2005-60

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Supreme Court Act 1933* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 22 December 2005. It also includes any amendment, repeal or expiry affecting the republished law to 22 December 2005.

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

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- authorised republications to which the *Legislation Act 2001* applies
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### Editorial changes

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

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

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

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### Penalties

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

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



Australian Capital Territory

# Supreme Court Act 1933

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Australian Capital Territory

## Supreme Court Act 1933

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

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Supreme Court Act 1933*.

### 2 Dictionary

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

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

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

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

### 2A Notes

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

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

## Part 2                      Constitution and jurisdiction of the Supreme Court

### 3                      Establishment

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

### 4                      Resident judges

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

**4A Additional judges**

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

**4B Acting judges**

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

**5 Seniority of judges**

- (1) The Chief Justice is the senior judge of the court.
- (2) The President is senior to all the other judges except the Chief Justice.
- (3) The resident judges are senior to the additional judges and the acting judges.
- (4) The additional judges are senior to the acting judges.

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

## **6 Acting Chief Justice**

Whenever—

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

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

**7 Arrangement of business of court**

Subject to section 37G (Arrangement of business of Court of Appeal), the Chief Justice is responsible for ensuring the orderly and expeditious discharge of the business of the court and accordingly may, subject to this Act and to such consultation with the judges as is appropriate and practicable, make arrangements as to the judge or judges who is or are to constitute the court in particular matters or classes of matters.

**8 Exercise of jurisdiction**

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

**9 Exercise of jurisdiction by master**

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

**10 Exercise of jurisdiction by registrar**

For the purposes of the exercise of jurisdiction given to the registrar under the rules, this Act has effect, subject to this section, as if the court consisted of the judges and the registrar.

**11 Exercise of jurisdiction—legal practitioners**

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

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

- (1) This section applies in relation to matters in which, apart from this section, the jurisdiction of the court would be exercisable by a single judge.



- (2) At any time before the beginning of the hearing of a matter in relation to which this section applies, a judge may order that the jurisdiction of the court in that matter shall be exercised by the Full Court.
- (3) At any time after the beginning of the hearing of a matter in relation to which this section applies, the judge hearing the matter may order that the jurisdiction of the court in that matter shall be exercised by the Full Court.
- (4) If an order has been made under subsection (2) or (3) in relation to a matter—
  - (a) the jurisdiction of the court in the matter must, subject to the rules, be exercised by the Full Court; and
  - (b) the court may give the directions it considers appropriate about the procedure to be followed in the further conduct of the proceeding, including directions about the use (if any) of any evidence received before the making of the order.

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

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

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

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

- (1) If the jurisdiction of the court is to be, or is being, exercised in a particular case by the master—

- (a) the master may, on the master's own initiative or on the application of a party to the proceedings, refer the proceedings to the court constituted by a single judge; and
  - (b) a judge may, on the application of a party to the proceedings, at any time before the conclusion of the proceedings before the master, order that the jurisdiction of the court in the case be exercised by the court constituted by a single judge.
- (2) If, under subsection (1), proceedings are referred or removed to the court constituted by a single judge, the court may—
- (a) give any directions it considers appropriate as to the procedure to be followed in the further conduct of the proceedings, including, if evidence was recorded before the referral or removal, directions as to the use (if any) to be made of the evidence; and
  - (b) remit the proceedings to the master with any directions the court considers appropriate.

## **16 Holding other judicial offices**

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

- (3) The Executive shall consult with the Chief Justice before giving the approval.

**18 Principal seat of court and sittings**

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

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

Before exercising the functions of office, a judge shall take or make—

- (a) an oath or affirmation in accordance with schedule 1, part 1.1;  
or
  - (b) an oath or affirmation in accordance with schedule 1, part 1.2;
- before another judge, a justice of the High Court or a judge of the Federal Court.

**20 Jurisdiction and powers of Supreme Court**

- (1) The court has the following jurisdiction:
  - (a) all original and appellate jurisdiction that is necessary to administer justice in the Territory;
  - (b) jurisdiction conferred by a Commonwealth Act or a law of the Territory.
- (2) Unless it is required to do so by or under a Commonwealth Act or a law of the Territory, the court is not bound to exercise its powers if it has concurrent jurisdiction with another court or tribunal.

**21 Distinction between court and chambers**

- (1) The distinction between court and chambers is abolished.
- (2) The business of the court, whether conducted in a courtroom or otherwise, shall be taken to be conducted in court.
- (3) Nothing in this section affects the practice and procedure of the court with respect to the business of the court that may be conducted in chambers or elsewhere other than in a courtroom.

**22 No trial by jury in civil proceedings**

In every suit in the court, the trial must be by the court without a jury.

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

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

**26 Equities of plaintiff**

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

**27 Equities of defendant**

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

**28 Counterclaims and third parties**

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

**29 Incidental equities**

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

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

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

- (2) A defence is available in proceedings if, in pre-Judicature Act proceedings of the same type, an injunction would previously have been available.
- (3) Nothing in this Act prevents the court from directing a stay in any proceedings pending before it.
- (4) On the motion of any entitled person, the court may grant a stay in any proceedings pending before it.
- (5) In this section:

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

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

**31 Common law and statute**

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

**32 Final determination of matters**

- (1) In the exercise of its jurisdiction under this Act in relation to proceedings in the court, the court shall, so far as practicable, ensure that—
  - (a) all the matters in issue between the parties to the proceedings are finally determined; and

- (b) all multiplicity of legal proceedings concerning those matters is avoided.
- (2) For subsection (1), the court may grant legal or equitable relief absolutely or conditionally.

### **33 Law and equity**

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

### **34 Injunctions**

- (1) At any stage of a proceeding, the court may grant an injunction (interlocutory or otherwise) on the conditions the court considers appropriate if the court considers it just to do so.
- (2) Without limiting subsection (1), the court may grant an injunction to restrain any threatened or apprehended waste, trespass, breach of contract or other injury.
- (3) Subsection (2) applies in relation to a threatened waste or trespass to land whether or not—
  - (a) the person against whom the injunction is sought claims any title to the land; or
  - (b) that person is in possession of the land; or
  - (c) the estates claimed by both or either of the parties are legal or equitable.

### **34A Receivers**

- (1) At any stage of a proceeding, the court may appoint a receiver if the court considers it just to do so.
- (2) The appointment may be made on the conditions the court considers appropriate.

**34B Prerogative remedies**

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

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

In a proceeding, if no provision about a matter of practice or procedure of the court is made under this Act or another Territory law, the court may give the directions about practice and procedure that it considers appropriate.

**36 Rules of court**

- (1) The resident judges or any 2 of the resident judges may make rules of court, not inconsistent with this or any other Act, with regulations under this Act or any other law of the Territory—
  - (a) for regulating and prescribing—
    - (i) the practice and procedure, including the method of pleading, to be followed in the court and in the offices of the court; and
    - (ii) all matters and things incidental to or relating to any such practice and procedure or necessary or convenient to be prescribed for the conduct of any business of the court; and
  - (b) for prescribing any matter or thing that is, by or under the Corporations Law, required or permitted to be prescribed by regulation under that law; and



- (c) for prescribing anything that is, under the *Administration and Probate Act 1929*, required or permitted to be prescribed for carrying out or giving effect to that Act; and
  - (d) for prescribing the qualifications for the admission of persons as legal practitioners of the court; and
  - (e) for prescribing any matter or thing that is, by this Act, by any other Act or by any ordinance, required or permitted to be prescribed by rules of court.
- (2) In particular the rules of court may provide—
- (a) for the places of sitting of the court; and
  - (b) for the service and execution of the process of the court including how and the extent to which the process of the court may be served and executed out of the jurisdiction of the court; and
  - (c) for the execution of the judgments of the court; and
  - (d) for the service and execution in the Territory, in accordance with any treaty or convention to which the Commonwealth is a party, of the process of any court of a State or of another Territory or of any foreign court; and
  - (e) for the issue by the court of letters of request for the service in any foreign country of any process of the court; and
  - (f) for regulating any matters relating to the costs of proceedings in the court; and
  - (g) for regulating the means by which particular facts may be proved and the mode in which evidence of them may be given in any proceedings, or on any application in connection with, or at any state of, any proceedings; and
  - (h) for the time of instituting appeals in the Court of Appeal, and how they are instituted.

- (3) The rules of court may provide for or with respect to—
- (a) the proceedings, or questions or issues of fact or law arising in proceedings, that may be referred by the court to an arbitrator or referee for determination or for inquiry and report; and
  - (b) the appointment of a judge, the master, the registrar or other officer of the court or other person as an arbitrator or referee; and
  - (c) the fees to be paid to an arbitrator or referee; and
  - (d) the persons by whom such a fee, or part of such a fee, is payable; and
  - (e) the consequences of a determination or report by an arbitrator or referee; and
  - (f) how a determination or report may be called in question; and
  - (g) whether or not, or to what extent, a determination or report may be called in question on a matter of fact or law; and
  - (h) the provision of the services of officers of the court and the provision of courtrooms and other facilities for the purpose of a reference to an arbitrator or referee; and
  - (i) any other matters associated with a reference.

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

### 37F Appointment of President

- (1) The Executive may, by commission, appoint a resident judge of the court (including the Chief Justice) as President of the Court of Appeal.

- (2) The President ceases to hold office if he or she ceases to be a resident judge of the court.
- (3) The President may resign as President by written notice to the Attorney-General.

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

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

**37H Appeal bench**

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

**37I Presiding judge**

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

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

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

- (3) The rules may provide that the jurisdiction and powers of the Court of Appeal may be exercised by a single judge in particular kinds of proceedings.

**37K Decision-making**

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

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

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

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

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

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

### **37M Reserved judgments**

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

### **37N Evidence on appeal**

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

**audio link**—see the *Evidence (Miscellaneous Provisions) Act 1991*, section 16 (Definitions for pt 3).

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

**37O Judgment on appeal**

- (1) The Court of Appeal has the following powers in relation to the judgment appealed from:
  - (a) to confirm, reverse or vary the judgment;
  - (b) to give any judgment it considers appropriate, or refuse to give an order applied for;
  - (c) to set aside the judgment (completely or in part) and remit the proceeding to the court constituted by a single judge for further hearing and decision, subject to any directions the Court of Appeal considers appropriate;
  - (d) to set aside the verdict and judgment in a trial on indictment and order a verdict of not guilty (or another verdict) to be entered;
  - (e) to order a new trial, with or without jury, on any appropriate ground;
  - (f) to award execution of any judgment, or remit the proceeding to the court constituted by a single judge for execution of the judgment.
- (2) If a judgment of the Court of Appeal is remitted for execution under subsection (1) (f), the court constituted by a single judge must execute the judgment of the Court of Appeal as if it were that judge's own judgment.
- (3) The Court of Appeal may exercise powers under subsection (1) in relation to the decision appealed from—
  - (a) despite any request in the notice of appeal that part only of the decision be reversed or varied; and
  - (b) in favour of all or any of the respondents or other parties, including any who have not appealed from or complained of the decision.



- (4) An interlocutory judgment from which there has been no appeal does not prevent the Court of Appeal from giving any decision on the appeal it considers just.
- (5) In a criminal matter, the powers of the Court of Appeal in an appeal against sentence (whether by the prosecution or defendant) include the following powers:
  - (a) to increase or decrease the sentence;
  - (b) to substitute a different sentence.

**37P New trials**

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

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

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

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

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

- (1) This section applies if a person has been tried on indictment in the court and acquitted in relation to all or any part of the indictment.

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

## Part 2B                      Remuneration, allowances and    other entitlements of judges

### 37T            **Meaning of *entitlements***

In this part:

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

### 37U            **Resident judges**

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

- (e) a reference to the Constitution, section 72 were a reference to the *Judicial Commissions Act 1994*, section 5; and
  - (f) a reference to the Consolidated Revenue Fund were a reference to the public money of the Territory; and
  - (g) a reference to the administrative appeals tribunal of the Commonwealth were a reference to the administrative appeals tribunal; and
  - (h) a reference in the *Judges' Pensions Act 1968* (Cwlth) to a **marital relationship** included a reference to a relationship between 2 people of the same sex, subject otherwise to that Act, section 4AB (Marital relationship); and
  - (i) a reference in the *Judges (Long Leave Payments) Act 1979* (Cwlth) to a **widow or widower** of a judge who has died included a reference to anyone else who was the domestic partner of the judge when the judge died; and
  - (j) all other necessary changes, and any changes prescribed by regulation, were made.
- (4) To remove any doubt, for the application of the *Judges' Pensions Act 1968* (Cwlth) to a person to whom this section applies a reference in that Act to the **appropriate current judicial salary** is—
- (a) for a person who was Chief Justice—a reference to salary at the rate that would be payable to the person as Chief Justice if the person had not died or retired; and
  - (b) for a person who was President—a reference to salary at the rate that would be payable to the person as President if the person had not died or retired.

- (5) For subsection (4), *salary* includes salary (however described) payable under a determination of the remuneration tribunal.

*Note 1* A reference to a Cwlth Act includes a reference to the Act as originally made and as amended (see Legislation Act, s 102).

*Note 2* For the meaning of *domestic partner*, see Legislation Act, s 169.

**U** **37V** **Acting judges**

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

**37W** **Dual appointments**

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

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

**37X Accrual and appropriation**

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

## Part 3                      The master

### 38                      The master

There shall be a Master of the court.

### 39                      Functions of master

The master has power to administer oaths and may exercise the other functions given to the master under this Act, another Territory law or a special order of the court.

### 40                      Appointment of master

- (1) The master shall be appointed by the Executive.

*Note* For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

- (2) A person shall not be appointed as the master unless the person has been a legal practitioner for not less than 5 years.
- (3) A person who is 70 years old or older must not be appointed as the master.

### 41                      Term of appointment of master

- (1) The master must be appointed either—
- (a) for a term of not longer than 7 years; or
  - (b) until the master turns 70 years old.
- (2) A term mentioned in subsection (1) (a) must not end after the master turns 70 years old.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see *Legislation Act 2001*, s 208 and dict, pt 1, def of *appoint*).

**41A Extension of master's term of appointment**

- (1) The Executive may, in writing, extend the term of the master's appointment for a stated period.
- (2) An extension must be made before the term of appointment (including that term as previously extended) ends.
- (3) The period of an extension must not end after the master turns 70 years old.
- (4) In this section:  
*extend* includes further extend.

**41B Conditions of appointment generally**

The master holds the position on the conditions not provided for by this Act or any other Territory law that are decided by the Executive.

**41C Holding other offices**

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

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

Before exercising the functions of office, the master shall take or make—



- (a) an oath or affirmation in accordance with schedule 1, part 1.1;  
or
- (b) an oath or affirmation in accordance with schedule 1, part 1.2;  
before a judge.

**43      Resignation**

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

**44      Retirement**

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

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

retire the master from office on the ground of invalidity.

## Part 4 Officers

### 46 Appointment

- (1) There shall be—
  - (a) a registrar of the court, and such deputy registrars and other officers of the court as are necessary; and
  - (b) a sheriff of the Territory and such deputy sheriffs of the Territory as are necessary.

*Note 1* For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see *Legislation Act 2001*, div 19.3.3).

- (2) The registrar and the sheriff shall be appointed by the Attorney-General.
- (3) The deputy registrars and the other officers referred to in subsection (1) (a) shall be appointed by the registrar.
- (4) The deputy sheriffs shall be appointed by the sheriff.
- (5) A person is not eligible to be appointed under subsection (3) or (4) unless he or she is a public servant.

### 46B Staff assisting registrar

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

**47 Functions of registrar and deputy registrars**

- (1) The registrar has power to administer oaths and may exercise the other functions given to the registrar under this Act, another Territory law or a special order of the court.
- (2) Subject to this Act and to any directions of the registrar, a deputy registrar may exercise the functions of the registrar under this Act or another Territory law.

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

- (3) The exercise of a function by a deputy registrar does not affect the power of the registrar to exercise the function.

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

Before exercising the functions of office, the registrar shall take or make—

- (a) an oath or affirmation in accordance with schedule 1, part 1.3;  
or
- (b) an oath or affirmation in accordance with schedule 1, part 1.4;  
before a judge.

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

- (1) If the court makes an order for the winding-up of a company, the court may direct that subsection (2) applies to the winding-up.
- (2) If the court gives a direction under subsection (1)—
  - (a) all proceedings in relation to the winding-up shall be before the master or the registrar; and
  - (b) the master and the registrar have all the powers of the court in relation to the winding-up; and

- (c) the master or registrar may refer to the court any matter in relation to the winding-up that the master or registrar considers should be decided by the court; and
  - (d) an appeal lies to the court from any judgment made by the master or registrar in relation to the winding-up.
- (3) A deputy registrar must not exercise a function of the registrar under this section.

**49A Access to details of address**

- (1) For the exercise of the registrar's functions, the registrar may, in writing, ask a relevant person to give the registrar any details held by the person about an address of a stated person who is liable to pay a fine imposed by the Supreme Court.
- (2) The relevant person must comply with the request as far as practicable.
- (3) In this section:  
*relevant person* means—
  - (a) the commissioner for housing; or
  - (b) the chief police officer; or
  - (c) the chief executive (however described) of a government agency.

**50 Functions of sheriff**

The sheriff shall—

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

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

## **51 Deputy sheriffs**

- (1) Subject to this Act and the directions of the sheriff, a deputy sheriff may exercise the functions of the sheriff under this Act or another Territory law.

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

- (2) In exercising the functions of the sheriff, a deputy sheriff has all the rights, privileges, immunities and liabilities of the sheriff.
- (3) The exercise of a function by a deputy sheriff does not affect the power of the sheriff to exercise the function.

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

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

**53 Sheriff's assistants**

- (1) The sheriff may appoint public servants to assist in the exercise of the sheriff's functions.

*Note 1* For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see *Legislation Act 2001*, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) A person appointed under subsection (1) (a *sheriff's assistant*)—
- (a) may exercise any function given to the sheriff, subject to this Act and any directions of the sheriff; and
  - (b) has the rights, privileges, immunities and liabilities of the sheriff.
- (3) Anything done by a sheriff's assistant is taken to have been done by the sheriff.

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

- (1) This section applies if, in executing a judgment against a judgment debtor—
- (a) the sheriff is refused entry into the judgment debtor's premises by an occupier of the premises, after having informed, or having made reasonable attempts to inform, the occupier (orally or in writing) about the procedure in relation to the execution of the judgment and the sheriff's intention to seek an order for entry under this section if entry is refused; or
  - (b) the sheriff—
    - (i) has made reasonable attempts to contact both the judgment debtor and any other occupier of the judgment debtor's premises to obtain consent to entry of the premises; and

- (ii) has been unable to make such contact with the judgment debtor or any other occupier of those premises.
- (2) If this section applies, on application by the sheriff the court may issue an order authorising the sheriff, for any purpose connected with executing the judgment, to enter the judgment debtor's premises using the force that is necessary and reasonable, with the assistance of a police officer or officers if the sheriff considers the assistance to be necessary.
- (3) Without limiting subsection (2), an order under that subsection is sufficient authority for the sheriff—
- (a) to search the judgment debtor's premises for anything that the sheriff is entitled to seize in execution of the judgment; and
  - (b) to seize and remove any such thing.
- (4) The court shall not make an order under subsection (2) authorising entry to a judgment debtor's premises unless satisfied that—
- (a) the judgment debtor resides at the premises; or
  - (b) there is within the premises anything that the sheriff is entitled to seize in execution of the judgment; or
  - (c) the sheriff is entitled to cause the premises to be sold in execution of the judgment.
- (5) No action, suit or proceeding lies against the sheriff in relation to an act done or omitted to be done honestly in carrying out an order of the court under subsection (2).
- (6) Nothing in this section is to be taken to limit any other power of the sheriff or the court in relation to the execution of a judgment.
- (7) In this section:
- judgment debtor's premises*** means premises occupied by the judgment debtor.

## Part 5 General matters of procedure

### 54 How evidence is to be given

- (1) Evidence in any suit must be given orally in open court.
- (2) Subsection (1) is subject to—
  - (a) any agreement of the parties to the contrary; and
  - (b) any other Territory law.

### 55 Evidence by affidavit

- (1) In any proceedings in the court, evidence may be given by affidavit—
  - (a) of the service of any relevant document; or
  - (b) of the signature of a party to the proceedings, or of his or her legal practitioner, to any relevant document.
- (2) The court may order that all or part of the evidence in a civil matter may or must be given by affidavit.
- (3) An order under subsection (2) may be made subject to any conditions the court considers appropriate, including, for example, the following:
  - (a) that a copy of an affidavit be served on a party in the matter;
  - (b) that a person whose evidence is given by affidavit attend the hearing to be available for cross-examination.

### 55A Hearing of bail applications

- (1) Unless the court otherwise directs, where—



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

(b) an audiovisual link is available between the place where the court is sitting and a place where the person is in custody;

the proceeding shall be conducted by the audiovisual link.

(2) The court may at any time vary or revoke a direction made under subsection (1), either on its own initiative or on the application of a party to the proceeding.

(3) This section does not apply in relation to a child.

(4) In this section:

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

## **56 Appearance by legal practitioner**

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

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

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

(a) order the examination of any person on oath or affirmation, orally or on interrogatories, before the court or before any officer of the court or other person, at any place in Australia; and

(b) order a commission or letters of request to be issued to take evidence; and

- (c) by the same or any subsequent order, give any necessary directions about the time, place and manner of any such examinations; and
- (d) authorise a party to the suit or civil matter to give in evidence testimony taken under this section on the conditions (if any) the court directs.

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

- (1) When there are several defendants in any cause pending in the court, if any defendant is not served with process and does not voluntarily appear, the court may nevertheless entertain the cause and proceed to hear and determine it between the parties who are properly before the court.
- (2) 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.
- (3) If, in a suit of which the court has jurisdiction, a defendant is not a resident of, or in, Australia and does not voluntarily appear in the suit, the court may nevertheless exercise its jurisdiction after notice to the defendant, and on the conditions, prescribed under the rules.

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

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

- (b) the depositions of the witness were taken in the presence of the accused person; and
- (c) the accused person or that person's legal practitioner had full opportunity of cross-examining the witness;

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

- (2) In this section:

*depositions*, of a witness, means—

- (a) if a record of the depositions was made in accordance with the *Magistrates Court Act 1930*, section 316 (2) (Record of proceedings)—a transcript of the record certified in accordance with that Act, section 314 (2) (Registrar to give directions for preparation of transcript); or
- (b) if the depositions were taken down in writing and signed in accordance with the *Magistrates Court Act 1930*, section 316 (3)—the depositions taken down and signed.

## **59 Amendment of defects**

- (1) The court may at any time amend a defect or error in a proceeding in the court.
- (2) The amendment may be made on the conditions the court considers just.
- (3) An amendment under this section is to be made for the purpose of deciding the real questions in issue in the proceeding.

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

- (1) No proceedings in the court shall be invalidated by any formal defect or by any irregularity, unless the court is of opinion that

substantial injustice has been caused and that the injustice cannot be remedied by an order of the court.

- (2) The court may make an order declaring that any proceeding is valid notwithstanding any such defect or irregularity.

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

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

**61 Reserved judgments**

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

**63 Change of venue**

- (1) At any stage of proceedings on a cause or matter in the court, the court may order that the cause or matter be heard at a specified place within Australia, or continued at another specified place within Australia, subject to section 18 (1) and to any conditions specified in the order.
- (2) After a cause or matter in the court has been heard at a place, the court may give further hearing or consideration to the cause or matter, or pronounce judgment, at a sitting of the court at another place within Australia, subject to section 18 (1).

**64 Seals**

- (1) The Court of Appeal must have a seal.
- (2) The Supreme Court must have a seal.

**67A Vexatious litigants**

- (1) In this section:

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

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

*vexatious proceedings* means proceedings—

- (a) the purpose of which is to harass or annoy, to cause delay or for some other ulterior purpose; or
  - (b) that lack reasonable grounds.
- (2) If, on the application of the Attorney-General or an aggrieved person, the court is satisfied that a person has frequently instituted vexatious proceedings, the court may declare the person to be a vexatious litigant.
- (3) A declaration may be expressed to apply only in relation to a particular type of matter.
- (4) A declaration may be expressed to be subject to the conditions the court considers appropriate.
- (5) If a person is declared to be a vexatious litigant—
- (a) the person, or a person acting in concert with the person, shall not institute or continue any proceedings or, for a declaration expressed to apply only in relation to a particular type of matter, proceedings of that type, without the leave of the court; and
  - (b) any proceedings pending at the time of the declaration or, for a declaration expressed to apply only in relation to a particular type of matter, proceedings of that type, are stayed subject to any order of the court in relation to those proceedings.
- (6) If the court gives leave to a person for subsection (5) (a), it may impose the conditions it considers appropriate.
- (7) Conditions imposed under subsection (6) in relation to proceedings may include conditions—
- (a) relating to security for costs in the proceedings; and
  - (b) specifying matters relating to the issue of process in the proceedings.

- (8) Unless expressed to remain in force until the end of a date specified in the declaration, a declaration remains in force until revoked by the court.
- (9) The court may vary a declaration.
- (10) Subject to any order of the court, an order making, varying or revoking a declaration is a notifiable instrument.
- Note* A notifiable instrument must be notified under the *Legislation Act 2001*.
- (11) If proceedings are instituted by a person in contravention of this section, the proceedings shall be taken to have been permanently stayed.
- (12) If practicable, any documents filed or lodged with a court or tribunal by a person in proceedings referred to in subsection (11) shall be returned to the person by the registrar or similar officer of a court or tribunal.
- (13) Notwithstanding subsection (5), a person declared to be a vexatious litigant may, without the leave of the court, apply to the court for the revocation or variation of the declaration or of any conditions to which the declaration is subject.

## Part 7 Trial on indictment

### 68 Prosecution of indictable offences

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



the accused person is in custody, may, by warrant, direct the discharge of the accused person from custody, and the accused person shall be discharged accordingly.

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

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

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

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

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

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

## Part 8

# Summary offences related to indictable offences

### 68D Related summary offences

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

### 68E Procedure

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

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

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

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

## Part 9                      Miscellaneous

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

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

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

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

### 73                Duty of receiver and manager

When, in any cause pending in the court, a receiver or manager appointed by the court is in possession of any property, the receiver or manager shall manage and deal with the property according to the

requirements of the laws of the State or Territory in which the property is situated, in the same way in which the owner or possessor would be bound to do if in possession.

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

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

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

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

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

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

- (5) On application, the registrar shall, subject to subsection (6)—
  - (a) give the applicant a copy of the whole or any requested part of a transcript prepared under subsection (2); and
  - (b) certify on the copy that it is a true copy of the transcript or part, as the case may be.
- (6) The registrar shall not give a copy of a transcript or part of a transcript to an applicant unless—
  - (a) the applicant is a party to the proceeding to which the transcript relates; or
  - (b) the applicant satisfies the registrar or a judge that he or she has good reason for applying.
- (7) If—
  - (a) a document purports to be a transcript, made in accordance with this section, of evidence given by a person in a proceeding in the Supreme Court; and
  - (b) the document bears a certificate that purports to be a certificate given in accordance with subsection (5);

any statement in the document is admissible in evidence in another proceeding to the same extent that the statement would, if given orally, be admissible in that other proceeding if the person—

- (c) is dead; or
- (d) is outside Australia and it is not reasonably practicable to secure his or her attendance; or
- (e) if unfit because of old age or bodily or mental condition to appear as a witness; or
- (f) cannot with reasonable diligence be found.

## **76 Regulation-making power**

The Executive may make regulations for this Act.

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



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

(see s 19, s 42 and s 48)

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

#### Oath

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

#### Affirmation

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

\* State whichever is applicable.

## Part 1.2 Chief Justice, judges and master

### Oath

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

### Affirmation

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

\* State whichever is applicable.

## **Part 1.3 Registrar**

### Oath

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

### Affirmation

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

## **Part 1.4 Registrar**

### Oath

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

### Affirmation

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

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## Dictionary

(see s 2)

*Note 1* The *Legislation Act 2001* contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the *Legislation Act 2001*, dict, pt 1, defines the following terms:

- exercise
- function
- police officer
- the Territory.

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

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

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

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

***court*** means the Supreme Court.

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

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

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

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

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

***entitlements***, for part 2B (Remuneration, allowances and other entitlements of judges)—see section 37T.

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

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

**judgment** includes any decree, order or sentence.

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

**master** means the Master of the court.

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

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

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

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

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

**registrar** means the Registrar of the court.

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

**resident judge** means the Chief Justice or another judge appointed under section 4, and includes the judges (other than additional judges) who continue to hold office under the *A.C.T. Self-Government (Consequential Provisions) Act 1988* (Cwlth), section 29A.

**rules** means—

- (a) rules under the *Court Procedures Act 2004* applying in relation to the court; or
- (b) rules under this Act, section 36.

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

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

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

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

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

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

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

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired



### 3 Legislation history

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

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

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

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

#### Legislation before becoming Territory enactment

##### **Supreme Court Act 1933 No 34**

assented to 9 December 1933

commenced 1 January 1934 (s 3)

as amended by

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

assented to 13 April 1935

commenced 13 April 1935

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

assented to 19 October 1945

commenced 19 October 1945 (s 2)

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

assented to 1 November 1947

commenced 1 November 1947 (s 2 (1))

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

assented to 9 December 1948

commenced 9 December 1948 (s 2)

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

assented to 14 December 1950

commenced 1 July 1950 (s 2)

## Endnotes

3 Legislation history

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

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

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

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

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

assented to 16 June 1955  
commenced 14 July 1955

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

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

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

assented to 7 June 1957  
commenced 5 July 1957

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

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

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

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

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

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

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

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

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

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

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

assented to 3 May 1966  
commenced 31 May 1966

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Endnotes

3 Legislation history

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

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

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

assented to 18 June 1981  
s 1, s 2 commenced on assent  
pt 5 commenced 1 July 1982 (s 2 (3) and Cwlth Gaz 1982 No S124)

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

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

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

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

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

assented to 22 November 1983  
amdt commenced 1 January 1984 (s 2 (4))

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

assented to 14 December 1983  
s 4 commenced 5 March 1984 (s 2 (1) and Cwlth Gaz 1984 No S55)

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

assented to 5 June 1985  
amdt commenced 3 July 1985 (s 2 (1))

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

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

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

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

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

assented to 2 December 1988  
commenced 2 December 1988 (s 2)

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

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

as modified by

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

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

as amended by

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

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

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

assented to 12 September 1991  
amdt commenced 10 October 1991

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

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

**Legislation after becoming Territory enactment****Supreme Court (Amendment) Act 1993 No 59**

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

## Endnotes

3 Legislation history

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Remuneration Tribunal (Consequential Amendments) Act 1997 No 41 sch 1 (as am by Act 2002 No 49 amdt 3.222)**

notified 19 September 1997 (Gaz 1997 No S264)  
commenced 24 September 1997 (s 2 as am by Act 2002 No 49 amdt 3.222)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Endnotes

3 Legislation history

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

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

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

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

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

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

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

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

**Supreme Court Amendment Act 2001 No 7**

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

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

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

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

notified 15 August 2001 (Gaz 2001 No S57)  
s 1, s 2 commenced 15 August 2001 (IA s 10B)  
s 3, s 15, sch 1 and sch 2 commenced 15 August 2001 (s 2 (1))  
ss 4-12, s 13 (to the extent that it inserts s 37E (1) and 37E (3), s 37F, s 37G, s 37H, s 37I, s 37J, s 37K, s 37L, s 37M, s 37N, s 37O and s 37P) and s 14 commenced 11 September 2001 (Gaz 2001 No S69 and IA s 10C)  
s 13 to the extent that it inserts s 37E (2) (a) (i) and s 37E (2) (c) commenced 1 October 2001 (Gaz 2001 No S69)  
remainder commenced 14 October 2002 (s 2 (2) and CN2002-11)



**Crimes Legislation Amendment Act 2001 No 63 pt 11 (as am 2002 No 49 amdt 3.52)**

notified 10 September 2001 (Gaz 2001 No S66)  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
pt 11 om Act 2002 No 49 before commencement

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

notified LR 24 September 2001  
s 1, s 2 commenced 24 September 2001 (LA s 75)  
s 43 (3) commenced 1 July 2002 (s 2)

**Statute Law Amendment Act 2002 No 30 pt 3.80**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 3.80 commenced 17 September 2002 (s 2 (1))

**Civil Law (Wrongs) Act 2002 No 40 div 3.2.12**

notified LR 10 October 2002  
s 1, s 2 commenced 10 October 2002 (LA s 75 (1))  
div 3.2.12 commenced 1 November 2002 (s 2 (2) and CN2002-13)

**Statute Law Amendment Act 2002 (No 2) No 49 amdt 3.52, amdt 3.222**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
amdt 3.52 commenced 17 January 2003 (s 2 (1))  
amdt 3.222 commenced 24 September 1997 (s 2 (3))

*Note* This Act only amends the Crimes Legislation Amendment Act 2001 No 63 and the Remuneration Tribunal (Consequential Amendments) Act 1997 No 41.

**Justice and Community Safety Legislation Amendment Act 2003 A2003-2 pt 17**

notified LR 3 March 2003  
s 1, s 2 commenced 3 March 2003 (LA s 75 (1))  
pt 17 commenced 31 March 2003 (s 2 (2))

**Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 sch 2 pt 2.14**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
sch 2 pt 2.14 commenced 30 April 2004 (s 2 and LA s 79)

## Endnotes

3 Legislation history

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**Sexuality Discrimination Legislation Amendment Act 2004 A2004-2  
sch 1 pt 1.15**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
sch 1 pt 1.15 commenced 22 March 2004 (s 2 and CN2004-4)

**Court Procedures (Consequential Amendments) Act 2004 A2004-60  
sch 1 pt 1.70**

notified LR 2 September 2004  
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))  
sch 1 pt 1.70 commenced 10 January 2005 (s 2 and see Court  
Procedures Act 2004 A2004-59, s 2 and CN2004-29)

**Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.64**

notified LR 12 May 2005  
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))  
sch 3 pt 3.64 commenced 2 June 2005 (s 2 (1))

**Justice and Community Safety Legislation Amendment Act 2005  
(No 3) A2005-43 sch 1 pt 1.13**

notified LR 30 August 2005  
s 1, s 2 commenced 30 August 2005 (LA s 75 (1))  
amdt 1.41 awaiting commencement (s 2 (3))  
sch 1 pt 1.13 remainder commenced 1 October 2005 (s 2 (3) and  
CN2005-18)  
*Note* default commencement under LA s 79: 28 February 2006

**Justice and Community Safety Legislation Amendment Act 2005  
(No 4) A2005-60 sch 1 pt 1.25**

notified LR 1 December 2005  
s 1, s 2 taken to have commenced 23 November 2005 (LA s 75 (2))  
sch 1 pt 1.25 commenced 22 December 2005 (s 2 (4))

## 4 Amendment history

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

### Title

title am 1971 No 98

### Name of Act

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

### Dictionary

s 2 orig s 2 sub 1959 No 51  
am 1964 No 109  
om 1973 No 216  
(prev s 5) am 1935 No 27; 1945 No 57; 1957 No 34; 1958  
No 43; 1964 No 109; 1968 No 156; 1971 No 13; 1971 No 98;  
1973 No 216; 1976 No 158; 1982 No 26; 1988 No 38; 1988  
No 109; 1992 No 49  
renum 1992 No 49  
defs reloc to dict 2001 No 54 amdt 1.3  
om 2001 No 54 amdt 1.4  
def **acting judge** ins 1993 No 91 s 4  
om 2001 No 54 amdt 1.2  
def **additional judge** am 1993 No 91 sch 2  
om 2001 No 54 amdt 1.2  
def **Chief Justice** om 2001 No 54 amdt 1.2  
def **enactment** om 1993 No 91 sch 2  
def **Ordinance** om 1993 No 91 sch 2  
def **resident judge** ins 1993 No 91 s 4  
om 2001 No 54 amdt 1.2  
def **the court** om 1993 No 91 sch 2  
def **the Judicature Act** om 1993 No 91 sch 2  
def **the Registrar** om 1993 No 91 sch 2  
def **the Sheriff** om 1993 No 91 sch 2  
def **the Supreme Court** om 1993 No 91 sch 2  
def **the Territory** or **the Australian Capital Territory** om  
1993 No 91 sch 2  
pres s 2 ins 2001 No 54 amdt 1.5  
am 2002 No 30 amdt 3.820

### Notes

2A ins 2001 No 54 amdt 1.5

## Endnotes

### 4 Amendment history

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#### **Establishment**

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

#### **Resident judges**

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

#### **Additional judges**

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

#### **Acting judges**

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

#### **Seniority of judges**

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

#### **Acting Chief Justice**

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

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

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

**Exercise of jurisdiction**

s 8 am 1945 No 57; 1956 No 47  
sub 1958 No 43  
am 1968 No 156; 1971 No 13  
sub 1971 No 98  
am 1976 No 158  
sub 1988 No 38  
mod SR 1989 No 3 (as am SR 1989 No 188) (exp 1 July 1992)  
am 1992 No 49; 1993 No 91 sch 2; 2001 No 54 s 8; A2004-60  
amdt 1.634

**Exercise of jurisdiction by master**

s 9 (prev s 8AAA) ins 1988 No 38  
renum 1992 No 49  
am 1993 No 91 sch 2; 2001 No 54 s 9, s 10; 2001 No 54  
amdt 1.13; 2002 No 30 amdt 3.821, amdt 3.822; A 2004-60  
amdt 1.635, amdt 1.636

**Exercise of jurisdiction by registrar**

s 10 (prev s 8AAB) ins 1988 No 38  
renum 1992 No 49  
am 1993 No 91 sch 2; 2001 No 54 amdt 1.13; 2002 No 30  
amdt 3.823-3.826; A2004-60 amdt 1.637, amdt 1.638;  
A2005-60 amdt 1.132, amdt 1.133

**Exercise of jurisdiction—legal practitioners**

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

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

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

## Endnotes

4 Amendment history

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

s 13 hdg am 1993 No 91 note  
s 13 orig s 13 am 1968 No 156; 1971 No 98  
om 1976 No 158  
(prev s 8AB) ins 1971 No 98  
am 1976 No 158  
renum 1992 No 49  
am 1993 No 91 sch 2; 2002 No 30 amdt 3.827; A2004-60  
amdt 1.639

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

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

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

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

### **Holding other judicial offices**

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

### **Salaries and travelling expenses**

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

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

s 18 (prev s 9) am 1992 No 49  
renum 1992 No 49  
am 1993 No 91 sch 2; A2004-60 amdt 1.640

**Oath or affirmation of office—judges**

s 19 (prev s 10) am 1958 No 43; 1976 No 158; 1981 No 176 (as am by 1982 No 80); 1982 No 26; 1992 No 49  
renum 1992 No 49  
sub 1993 No 91 s 12; 2001 No 7 s 4  
am 2002 No 30 amdts 3.828-3.830

**Jurisdiction and powers of Supreme Court**

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

**Distinction between court and chambers**

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

**No trial by jury in civil proceedings**

s 22 hdg sub 1993 No 59 note  
s 22 (prev s 14) renum 1992 No 49  
am 1993 No 91 s 14, sch 2; 2001 No 88 s 43 (3)  
sub 2002 No 40 amdt 3.39

**Costs**

s 23 (prev s 15) am 1957 No 34; 1988 No 109  
renum 1992 No 49  
am 1993 No 91 sch 2; A2004-60 amdt 1.641; A2005-60  
amds 1.134-1.136  
reloc to Court Procedures Act 2004, div 10.7 as s 134 by  
A2005-60 amdt 1.137

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

s 24 (prev s 16) am 1950 No 80  
renum 1992 No 49  
am 1993 No 91 sch 2  
om A2004-60 amdt 1.642

**Law and equity to be concurrently administered**

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

**Equities of plaintiff**

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

**Equities of defendant**

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

## Endnotes

### 4 Amendment history

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#### **Counterclaims and third parties**

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

#### **Incidental equities**

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

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

s 30 orig s 30 om 1959 No 51  
(prev s 22) renum 1992 No 49  
sub 1993 No 91 sch 2  
am 2002 No 30 amdt 3.831; A2004-60 amdt 1.643; ss renum  
R18 LA (see A2004-60 amdt 1.644)

#### **Common law and statute**

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

#### **Final determination of matters**

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

#### **Law and equity**

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

#### **Remuneration and allowances**

s 33B ins 1988 No 38  
om 1992 No 49

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

s 33E ins 1988 No 38  
om 1992 No 49

#### **Injunctions**

s 34 (prev s 26) renum 1992 No 49  
sub 1993 No 91 s 15  
am 2001 No 54 amdt 1.16, amdt 1.17; 2002 No 30 amdt 3.832

#### **Receivers**

s 34A ins 1993 No 91 s 15  
sub 2002 No 30 amdt 3.833



**Prerogative remedies**

s 34B ins 1993 No 91 s 15  
am 2002 No 30 amdt 3.834

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

s 35 (prev s 27) sub 1957 No 34  
am 1988 No 109  
renum 1992 No 49  
sub 1993 No 91 s 15; 2002 No 30 amdt 3.835

**Rules of court**

s 36 (prev s 28) am 1950 No 80; 1957 No 34; 1968 No 156; 1971  
No 98; 1973 No 216; 1976 No 158; 1978 No 3; 1981 No 92;  
1982 No 26; 1986 No 168; 1988 No 99; 1988 No 108  
mod SR 1989 No 3 (as am SR 1989 No 52) (exp 1/07/92)  
am 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 16, sch 2; 1997 No 96 sch 1; 1999 No 66  
sch 3; 2001 No 54 s 11, s 12; 2002 No 30 amdt 3.836,  
amdt 3.837

**Fees and charges—determination**

s 37 (prev s 29) om 1959 No 51  
ins 1978 No 3  
renum 1992 No 49  
sub 1994 No 3 s 4  
am 1997 No 96 sch 1; 1999 No 66 sch 3; 2001 No 44  
amds 1.3957-1.3959  
om A2004-60 amdt 1.645

**Fees and charges—payment**

s 37A ins 1994 No 3 s 4  
am 2001 No 44 amdt 1.3960; 2002 No 30 amdt 3.838  
om A2004-60 amdt 1.645

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

s 37B ins 1994 No 3 s 4  
am 1994 No 45 sch; 1995 No 46 sch; 1997 No 58 sch 1; 1997  
No 83 s 34; 1999 No 64 sch 2; 1999 No 66 sch 3; 1999  
No 91 sch 2; 2002 No 30 amds 3.839-3.843  
om A2004-60 amdt 1.645

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

s 37C ins 1994 No 3 s 4  
om A2004-60 amdt 1.645

**Fees and charges—review of decisions**

s 37D ins 1994 No 3 s 4  
am 1999 No 66 sch 3  
om A2004-60 amdt 1.645

## Endnotes

### 4 Amendment history

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#### **Court of Appeal**

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

#### **Appellate jurisdiction**

s 37E orig s 37E renum as s 37T  
ins 2001 No 54 s 13  
am 2001 No 63 s 72, s 73 (s 72, s 73 om 2002 No 49  
amdt 3.52 before commencement)

#### **Appointment of President**

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

#### **Arrangement of business of Court of Appeal**

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

#### **Appeal bench**

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

#### **Presiding judge**

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

#### **Appeal court constituted by single judge**

s 37J ins 2001 No 54 s 13  
am A2005-43 amdt 1.35, amdt 1.36

#### **Decision-making**

s 37K ins 2001 No 54 s 13

#### **Appeal judge unable to continue sitting**

s 37L ins 2001 No 54 s 13

#### **Reserved judgments**

s 37M ins 2001 No 54 s 13

#### **Evidence on appeal**

s 37N ins 2001 No 54 s 13  
am A2003-48 amdt 2.19, amdt 2.20

#### **Judgment on appeal**

s 37O ins 2001 No 54 s 13  
am 2002 No 40 amdt 3.40; pars renum R13 LA (see 2002  
No 40 amdt 3.41)

#### **New trials**

s 37P ins 2001 No 54 s 13

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

s 37Q ins 2001 No 54 s 13

**Reference appeal following acquittal on indictment**

s 37S ins 2001 No 54 s 13

**Remuneration, allowances and other entitlements of judges**

pt 2B hdg (prev pt 2A hdg) ins 1998 No 72 s 5  
renum 2001 No 54 amdt 1.18  
sub 2002 No 30 amdt 3.844

**Meaning of *entitlements***

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

**Resident judges**

s 37U (prev s 37F) ins 1998 No 72 s 5  
am 2001 No 54 amdts 1.19-1.21  
renum 2001 No 54 amdt 1.23  
am 2002 No 30 amdt 3.845; A2004-2 amdts 1.50-1.53;  
A2005-43 amdts 1.37-1.40

**Entitlements of acting judges**

s 37V (prev s 37G) ins 1998 No 72 s 5  
am 2001 No 54 amdt 1.22  
renum 2001 No 54 amdt 1.23  
sub A2005-43 amdt 1.41

**Dual appointments**

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

**Accrual and appropriation**

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

**The master**

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

**The master**

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

**Functions of master**

s 39 (prev s 31) om 1959 No 51  
ins 1988 No 38  
am 1988 No 109  
renum 1992 No 49  
am 1993 No 91 sch 2  
sub 2002 No 30 amdt 3.846

## Endnotes

### 4 Amendment history

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#### **Appointment of master**

s 40 (prev s 32) om 1959 No 51  
ins 1988 No 38  
am 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 17; 1997 No 96 sch 1; 2002 No 30  
amdt 3.847, amdt 3.848

#### **Term of appointment of master**

s 41 (prev s 33) om 1959 No 51  
ins 1988 No 38  
renum 1992 No 49  
am 1993 No 91 s 18  
sub 2002 No 30 amdt 3.849

#### **Extension of master's term of appointment**

s 41A ins 1993 No 91 s 19  
sub 2002 No 30 amdt 3.850

#### **Conditions of appointment generally**

s 41B ins 1993 No 91 s 19  
sub 2002 No 30 amdt 3.851

#### **Holding other offices**

s 41C ins 1993 No 91 s 19

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

s 42 (prev s 33A) ins 1988 No 38  
renum 1992 No 49  
sub 1993 No 91 s 19; 2001 No 7 s 5  
am 2002 No 30 amdt 3.852-3.854

#### **Resignation**

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

#### **Retirement**

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

#### **Acting appointments**

s 45 (prev s 33F) ins 1988 No 38  
am 1992 No 49  
renum 1992 No 49  
am 1994 No 10 s 11 (3); 2001 No 44 amdt 1.3961,  
amdt 1.3962  
om 2002 No 30 amdt 3.855

**Appointment**

s 46 (prev s 34) am 1957 No 34  
sub 1964 No 109  
am 1971 No 98; 1988 No 109  
renum 1992 No 49  
am 1993 No 91 s 20, sch 2; 2002 No 30 amdt 3.856

**Acting appointments**

s 46A ins 1993 No 91 s 21  
om 2002 No 30 amdt 3.857

**Staff assisting registrar**

s 46B ins 1994 No 38 sch 1 pt 75

**Functions of registrar and deputy registrars**

s 47 (prev s 35) sub 1957 No 34  
am 1968 No 156; 1983 No 91; 1988 No 38; 1988 No 109  
renum 1992 No 49  
sub 1993 No 91 sch 2; 2002 No 30 amdt 3.858  
am A2004-60 amdt 1.646

**Oath or affirmation of office—registrar**

s 48 (prev s 35AA) ins 1992 No 49  
renum 1992 No 49  
sub 1993 No 91 sch 2; 2001 No 7 s 6  
am 2002 No 30 amdt 3.859-3.861

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

s 49 (prev s 35A) ins 1968 No 156  
am 1988 No 38; 1991 No 136  
renum 1992 No 49  
am 1993 No 91 sch 2; 2002 No 30 amdt 3.862-3.864

**Access to details of address**

s 49A ins A2003-2 s 78

**Functions of sheriff**

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

**Appeals**

pt 6 hdg om 1976 No 158

**Deputy sheriffs**

s 51 orig s 51 am 1955 No 36; 1957 No 34; 1966 No 93; 1968  
No 156  
om 1976 No 158  
(prev s 37) renum 1992 No 49  
sub 1993 No 91 sch 2; 2002 No 30 amdt 3.865  
am A2004-60 amdt 1.646

## Endnotes

### 4 Amendment history

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

s 52 orig s 52 sub 1964 No 109  
om 1976 No 158  
(prev s 37A) ins 1964 No 109  
am 1988 No 109  
renum 1992 No 49  
sub 1993 No 91 sch 2  
am 2002 No 30 amdt 3.866

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

s 53 (prev 37B) ins 1992 No 49  
renum 1992 No 49  
am 1993 No 91 s 22, sch 2  
sub 2002 No 30 amdt 3.867

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

s 53A ins 1998 No 6 s 4  
am 2001 No 54 amdt 1.24; 2002 No 30 amdt 3.868

#### **How evidence is to be given**

s 54 hdg sub 2002 No 30 amdt 3.869  
s 54 (prev s 38) sub 1971 No 98  
am 1988 No 109  
renum 1992 No 49  
am 1993 No 91 sch 2; 2002 No 30 amdt 3.870  
sub A2004-60 amdt 1.647

#### **Evidence by affidavit**

s 55 (prev s 39) am 1957 No 34  
sub 1971 No 98  
renum 1992 No 49  
am 1993 No 91 sch 2; 1997 No 96 sch 1; 2002 No 30  
amdt 3.871

#### **Hearing of bail applications**

s 55A ins 1999 No 22 s 38  
am 2000 No 17 sch 1; 2001 No 54 amdt 1.25; 2002 No 30  
amdt 3.872; A2003-48 amdt 2.21

#### **Appearance by legal practitioner**

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

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

s 57 (prev s 41) renum 1992 No 49  
am 1993 No 91 sch 2; 2002 No 30 amdt 3.873, amdt 3.874

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

s 58 (prev s 42) renum 1992 No 49  
am 1993 No 91 sch 2; 2002 No 30 amdt 3.875, amdt 3.876;  
A2004-60 amdt 1.648

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

s 58A reloc from Evidence Act 1971 s 73 by 1999 No 66 sch 3  
am 2002 No 30 amdt 3.877; A2004-60 amdt 1.649; A2005-20  
amdt 3.404

**Amendment of defects**

s 59 (prev s 43) renum 1992 No 49  
sub 1993 No 91 sch 2; 2002 No 30 amdt 3.878

**Formal defects to be amended**

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

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

s 60A ins 1993 No 91 s 23  
am 2001 No 54 s 14; 2002 No 30 amdt 3.879

**Reserved judgments**

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

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

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

**Change of venue**

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

**Seals**

s 64 (prev s 47) am 1971 No 98; 1976 No 158; 1982 No 26  
renum 1992 No 49  
am 1993 No 91 sch 2  
sub A2005-60 amdt 1.138

**Use of seals**

s 65 (prev s 48) renum 1992 No 49  
sub 1993 No 91 sch 2  
am A2004-60 amdt 1.650  
reloc to Supreme Court Rules o 1 r 5 by A2004-60 amdt 1.651

## Endnotes

### 4 Amendment history

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#### **Date of process**

s 66 (prev s 49) renum 1992 No 49  
am 1993 No 91 sch 2; A2005-60 amdt 1.139, amdt 1.140  
reloc to Court Procedures Act 2004, div 10.7 as s 135 by  
A2005-60 amdt 1.141

#### **Oaths and affirmations**

s 67 (prev s 50) am 1957 No 34; 1992 No 49  
renum 1992 No 49  
sub 1993 No 91 s 24  
om A2004-60 amdt 1.652

#### **Vexatious litigants**

s 67A ins 1998 No 72 s 6  
am 2001 No 44 amdt 1.3963; 2002 No 30 amdt 3.880,  
amdt 3.881

#### **Trial on indictment**

pt 7 hdg sub 1993 No 59 s 5

#### **Prosecution of indictable offences**

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

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

s 68A ins 1993 No 59 s 6

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

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

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

s 68C ins 1993 No 59 s 6

#### **Summary offences related to indictable offences**

pt 8 hdg ins 1993 No 59 s 6

#### **Related summary offences**

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

#### **Procedure**

s 68E ins 1993 No 59 s 6

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

s 68F ins 1993 No 59 s 6



**Miscellaneous**

pt 9 hdg ins 1993 No 59 s 6

**Interest up to judgment**

s 69 (prev s 53A) ins 1981 No 176  
renum 1992 No 49  
am 1993 No 91 sch 2; 2002 No 30 amdts 3.882-3.884  
reloc to Supreme Court Rules o 42A r 1 by A2004-60  
amdt 1.653

**Interests on judgments**

s 70 (prev s 54) am 1966 No 93  
sub 1976 No 158  
renum 1992 No 49  
om A2004-60 amdt 1.654

**Failure to attend Supreme Court as required**

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

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

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

**Powers of judge**

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

**Duty of receiver and manager**

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

**Liability and protection of receivers and managers**

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

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

s 74A reloc from Evidence Act 1971 s 91 with amdts by 1999 No 66  
sch 3  
R11 LA (see 2002 No 30 amdt 3.885)

**Approved forms**

s 75 orig s 75 renum as s 76 2001 No 44 amdt 1.3965  
ins 2001 No 44 amdt 1.3965  
(4)-(7) exp 12 September 2002 (s 75 (7))  
am 2002 No 30 amdt 3.886  
om A2004-60 amdt 1.655

## Endnotes

4 Amendment history

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### Regulation-making power

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

### The schedules

hdg to schs om 1985 No 65

### Rules relating to service out of the jurisdiction

first schedule om 1950 No 80

### Form of certificate of judgment

second schedule om 1959 No 51

### Oaths and affirmations of office

sch 1 (prev sch) ins 1993 No 91 s 26, sch 1  
sub 2001 No 7 s 7

sch 1 hdg (prev sch hdg) renum R7 LA  
pt 1.1 hdg (prev pt 1 hdg) renum R7 LA  
pt 1.2 hdg (prev pt 2 hdg) renum R7 LA  
pt 1.3 hdg (prev pt 3 hdg) renum R7 LA  
pt 1.4 hdg (prev pt 4 hdg) renum R7 LA

### Dictionary

dict ins 2001 No 54 amdt 1.28  
am 2002 No 30 amdt 3.887  
def **acting judge** ins 2001 No 54 amdt 1.28  
def **additional judge** ins 2001 No 54 amdt 1.28  
def **clause** reloc from s 2 2001 No 54 amdt 1.3  
def **Chief Justice** ins 2001 No 54 amdt 1.28  
def **court** ins 1993 No 91 sch 2  
reloc from s 2 2001 No 54 amdt 1.3  
def **Court of Appeal** ins 2001 No 54 amdt 1.28  
def **criminal proceedings** ins 1993 No 59 s 4  
reloc from s 2 2001 No 54 amdt 1.3  
def **defendant** reloc from s 2 2001 No 54 amdt 1.3  
def **deputy registrar** am 1993 No 91 sch 2  
reloc from s 2 2001 No 54 amdt 1.3  
def **deputy sheriff** reloc from s 2 2001 No 54 amdt 1.3  
def **entitlements** ins 2001 No 54 amdt 1.28  
sub 2002 No 30 amdt 3.888  
def **Full Court** ins 1993 No 91 sch 2  
reloc from s 2 2001 No 54 amdt 1.3  
def **judge** (prev **judge** or **judge of the Supreme Court**) sub  
1993 No 91 s 4  
reloc from s 2 2001 No 54 amdt 1.3

def **judgment** reloc from s 2 2001 No 54 amdt 1.3  
 def **Judicature Act** ins 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **master** am 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **matter** reloc from s 2 2001 No 54 amdt 1.3  
 def **plaintiff** reloc from s 2 2001 No 54 amdt 1.3  
 def **pre-Judicature Act proceedings** ins 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **President** ins 2001 No 54 amdt 1.28  
 def **president** am 1993 No 91 sch 2; 1994 No 60 sch 1  
 reloc from s 2 2001 No 54 amdt 1.3  
 om 2002 No 30 amdt 3.889  
 def **process of the court** ins 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **registrar** ins 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **related summary offence** ins 1993 No 59 s 4  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **resident judge** ins 2001 No 54 amdt 1.28  
 def **rules** ins A2004-60 amdt 1.656  
 def **sheriff** ins 1993 No 91 sch 2  
 reloc from s 2 2001 No 54 amdt 1.3  
 def **suit** reloc from s 2 2001 No 54 amdt 1.3

## 5 Earlier republications

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

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

Republication No	Amendments to	Republication date
1	Act 1992 No 49	1 July 1992
2	Act 1993 No 94	31 December 1993
3	Act 1994 No 60	28 February 1995
4	Act 1996 No 26	30 November 1996
5	Act 1998 No 72	31 March 1999

## Endnotes

### 5 Earlier republications

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<b>Republication No</b>	<b>Amendments to</b>	<b>Republication date</b>
6	Act 2000 No 17	1 September 2000
7	Act 2001 No 88	12 September 2001
8*	Act 2001 No 88	30 April 2002
9	Act 2001 No 88	1 July 2002
10	Act 2001 No 88	13 September 2002
11	Act 2002 No 30	17 September 2002
12	Act 2002 No 30	14 October 2002
13	Act 2002 No 40	1 November 2002
14	Act 2002 No 49	17 January 2003
14 (RI)	Act 2002 No 49 ‡	19 February 2003
15	A2003-2	31 March 2003
16	A2004-2	22 March 2004
17	A2004-2	30 April 2004
18*	A2004-60	10 January 2005
19	A2005-20	2 June 2005
20	<u>A2005-43</u>	1 October 2005

‡ includes retrospective amendments by Act 2002 No 49

**6 Uncommenced amendments**

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

**Justice and Community Safety Legislation Amendment Act 2005 (No 3) A2005-43 sch 1 pt 1.13, amdt 1.41****[1.41] Section 37V**

*substitute*

**37V Entitlements of acting judges**

An acting judge is entitled to the same entitlements, other than in relation to leave or pension, as a judge.

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