



AUSTRALIAN CAPITAL TERRITORY

Supreme Court (Amendment) Act (No. 2) 1998

No. 72 of 1998

An Act to amend the *Supreme Court Act 1933*

[Notified in ACT Gazette S212: 23 December 1998]

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

1. Short title

This Act may be cited as the *Supreme Court (Amendment) Act (No. 2) 1998*.

2. Commencement

(1) Sections 1, 2, 3, 6 and 8 commence on the day on which this Act is notified in the *Gazette*.

(2) Sections 4, 5 and 7 shall be taken to have commenced on 29 September 1997.

3. Principal Act

In this Act, “Principal Act” means the *Supreme Court Act 1933*.¹

4. Repeal

Section 17 of the Principal Act is repealed.

5. Insertion

After Part II of the Principal Act the following Part is inserted:

“PART IIA—TERMS AND CONDITIONS OF JUDGES

“37E. Interpretation

In this Part, unless the contrary intention appears—

‘entitlements’ means a benefit other than remuneration or allowances.

“37F. Resident Judges

“(1) This section applies to a person (not being a person to whom subsection 29A (2) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth applies) who is appointed as a resident Judge, being an appointment made while another resident Judge holds office as a Judge of the Federal Court.

“(2) A person to whom this section applies shall be entitled to the same remuneration, allowances and entitlements as Judges of the Federal Court are entitled to from time to time.

“(3) For the purposes of subsection (2), the *Judges’ Pensions Act 1968* of the Commonwealth and the *Judges (Long Leave Payments) Act 1979* of the Commonwealth, as in force from time to time, 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 laws of the Territory;
- (b) the person had been a Judge of the Federal Court immediately before he or she retired or died 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;
- (c) a reference to the Attorney-General of the Commonwealth were a reference to the Attorney-General;
- (d) a reference to the Governor-General of the Commonwealth were a reference to the Executive;
- (e) a reference to section 72 of the Constitution were a reference to section 5 of the *Judicial Commissions Act 1994*;
- (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.

“37G. Acting Judges

“(1) The remuneration and allowances of an acting Judge shall be as prescribed.

“(2) An acting Judge shall receive the same entitlements, other than in relation to leave or pension, as a resident Judge.

“37H. 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 respect of the superior court office.

“(3) Where 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 respect of his or her superior court office, the Judge is entitled to receive an additional amount equal to that excess.

“(4) Where 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 respect of his or her superior court office; or
- (b) are of a better quality than those provided for in respect of 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.

“37I. 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.”.

6. Insertion

After section 67 of the Principal Act the following section is inserted in Part V:

“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) which 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 respect of a particular type of matter.

“(4) A declaration may be expressed to be subject to such conditions as the Court thinks fit.

“(5) If a person is declared to be a vexatious litigant—

- (a) the person, or a person acting in concert with the person, shall not institute or continue any proceedings or, in the case of a declaration expressed to apply only in respect of 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, in the case of a declaration expressed to apply only in respect of a particular type of matter, proceedings of that type, are stayed subject to any order of the Court in relation to those proceedings.

“(6) Where the Court grants leave to a person for the purposes of paragraph (5) (a), it may impose such conditions as it thinks fit.

“(7) Conditions imposed under subsection (6) in relation to proceedings may include conditions—

- (a) relating to security for costs in the proceedings; and
- (b) specifying matters relating to the issue of process in the proceedings.

“(8) Unless expressed to remain in force until the expiration 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, the making, variation and revocation of a declaration shall be notified by the Registrar in the *Gazette*.

“(11) Where proceedings are instituted by a person in contravention of this section the proceedings shall be taken to have been permanently stayed.

“(12) Where 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.”.

7. Revocation of determination

The interim determination dated 24 September 1997 made under section 14 of the *Remuneration Tribunal Act 1995* relating to the remuneration, allowances and entitlements of resident Judges of the Supreme Court is revoked.

8. Consequential amendments of Remuneration Tribunal Act

(1) Section 10 of the *Remuneration Tribunal Act 1995* is amended—

- (a) by inserting in paragraph (1) (s) “Officer” after “Executive”;
- (b) by inserting in subsection (2) “a person to whom section 37F of the *Supreme Court Act 1933* applies, an additional Judge, an acting Judge or” after “who is”; and
- (c) by omitting subsection (3) and substituting the following subsection:

“(3) The Tribunal shall, from time to time as provided by this Division, inquire into and determine the remuneration and allowances to be paid, and other entitlements to be granted, to the

Supreme Court (Amendment) Act (No. 2) 1998 No. 72, 1998

Chief Justice of the Supreme Court in respect of that office in addition to any remuneration, allowances and entitlements payable or due to him or her as a resident Judge or a Judge of the Federal Court.”.

(2) Where a determination was in force under subsection 10 (3) of the *Remuneration Tribunal Act 1995* immediately before the commencement of this section, the determination shall continue in operation as if made under subsection 10 (3) of the *Remuneration Tribunal Act 1995* as amended by this Act.

NOTE

Principal Act

1. Reprinted as at 30 November 1996. See also Acts Nos. 41, 58, 83 and 96, 1997; No. 6, 1998.

[Presentation speech made in Assembly on 19 November 1998

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