

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Supreme Court (Amendment) Bill (No. 2)
1993**

TABLE OF PROVISIONS

Section	
1.	Short title
2.	Commencement
3.	Principal Act
4.	Interpretation
5.	Establishment
6.	Insertion—
	4A. Acting Judges—appointment and tenure
7.	Seniority of Judges
8.	Substitution—
	11. Exercise of jurisdiction—legal practitioners
9.	Full Court decisions—equal division of opinion
10.	Holding other judicial offices
11.	Remuneration of Judges
12.	Substitution—
	19. Oath or affirmation of office—Judges

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TABLE OF PROVISIONS—continued

Section	
13.	Substitution—
	21. Distinction between court and chambers
14.	Trial by jury in civil proceedings
15.	Substitution—
	34. Injunctions
	34A. Receivers
	34B. Prerogative remedies
	35. Rules of practice and procedure—judicial discretion
16.	Rules of Court
17.	Appointment of Master
18.	Term of office
19.	Substitution—
	41A. Extension of term of office
	41B. Terms and conditions not provided for by this Act
	41C. Holding other offices
	42. Oath or affirmation of office—Master
20.	Appointment
21.	Insertion—
	46A. Acting appointments
22.	Sheriff's assistants
23.	Insertion—
	60A. Completion of part-heard matters—expiration of term of office
24.	Substitution—
	67. Oaths and affirmations
25.	Substitution—
	75. Regulations
26.	Addition
27.	Formal amendments
28.	Repeal of <i>Supreme Court Act 1952</i>

SCHEDULE 1**SCHEDULE****OATHS AND AFFIRMATIONS OF OFFICE****SCHEDULE 2****FORMAL AMENDMENTS****SCHEDULE 3****FORMAL AMENDMENTS OF OTHER ACTS**

1993
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(Attorney-General)

**Supreme Court (Amendment) Bill (No. 2)
1993**

**A BILL
FOR**

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

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

Short title

- 5 1. This Act may be cited as the *Supreme Court (Amendment) Act (No. 2) 1993*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

- 10 3. In this Act, "Principal Act" means the *Supreme Court Act 1933*.¹

Interpretation

4. Section 2 of the Principal Act is amended—

(a) by omitting the combined definition of “ ‘Judge’ or ‘Judge of the Supreme Court’ ” and substituting the following definition:

5 “ ‘Judge’ means a resident Judge, additional Judge or acting Judge;” and

(b) by inserting the following definitions:

 “ ‘acting Judge’ means an acting Judge appointed under subsection 4A (1);

10 ‘resident Judge’ means the Chief Justice or another Judge appointed under subsection 4 (1) and includes the Judges (other than additional Judges) who continue to hold office pursuant to section 29A of the *A.C.T. Self-Government (Consequential Provisions) Act 1988* of the Commonwealth;”

15

Establishment

5. Section 3 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) The Court shall consist of the Chief Justice and the other Judges.”

20 **Insertion**

6. After section 4 of the Principal Act the following section is inserted:

Acting Judges—appointment and tenure

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

25 “(2) An appointment under subsection (1) shall be for such period, not exceeding 12 months, as is specified in the commission.

 “(3) A person is not eligible to be appointed under subsection (1) unless he or she—

30 (a) has been a Judge of a superior court of record of the Commonwealth, a State or a Territory; or

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

Seniority of Judges

35 7. Section 5 of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

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

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

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

(a) according to the dates on which their respective commissions took effect; or

10 (b) if the commissions of 2 or more of them took effect on the same date—according to the precedence assigned to them by their respective commissions.

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

(a) according to the dates on which their respective commissions took effect; or

15 (b) if the commissions of 2 or more of them took effect on the same date—according to the precedence assigned to them by their respective commissions.

“(6) The acting Judges have seniority as between themselves—

(a) according to the dates on which their respective commissions took effect; or

20 (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.”.

Substitution

25 8. (1) Section 11 of the Principal Act is repealed and the following section substituted:

Exercise of jurisdiction—legal practitioners

“11. (1) The jurisdiction of the Court in an application for admission to practise as a barrister and solicitor of the Court shall be exercised by a Full Court unless the Chief Justice directs otherwise.

30 “(2) The jurisdiction of the Court in proceedings relating to the issue, suspension or cancellation of a practising certificate under the *Legal Practitioners Act 1970* shall be exercised by a Full Court.

“(3) The jurisdiction of the Court in proceedings under Division 3 of Part V of the *Legal Practitioners Act 1970* shall, as regards—

- (a) a finding whether the conduct of a legal practitioner has been such as to justify it making an order under subsection 41 (1) of that Act; or
- (b) making such an order in relation to a legal practitioner;

5 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.

10 “(5) A single Judge who has heard any part of proceedings referred to in subsection (3) for the purpose of making any findings of fact may be 1 of the Judges who exercise the jurisdiction of the Court in those proceedings pursuant to that subsection.”.

15 (2) Subsections 11 (3), (4) and (5) of the Principal Act as amended by subsection (1) shall be taken to apply in relation to conduct of a legal practitioner whether occurring before or after the commencement of that subsection.

Full Court decisions—equal division of opinion

20 9. Section 14 of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

“(b) in any other case—the opinion of the senior Judge sitting prevails.”.

Holding other judicial offices

10. Section 16 of the Principal Act is amended—

25 (a) by omitting subsection (2) and substituting the following subsection:

“(2) A resident Judge or acting Judge is not, without the written approval of the Executive, entitled to—

30 (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

35 (b) accept appointment to another judicial office or to an office under a law of the Territory, the Commonwealth, a State or another Territory.”; and

(b) by omitting subsection (4).

Remuneration of Judges

11. Section 17 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

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

“(3) Subsection (2) does not apply to—

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

15 “(3A) The remuneration and allowances to which a Judge is entitled accrue from day to day and are payable monthly.”

Substitution

12. Section 19 of the Principal Act is repealed and the following section substituted:

Oath or affirmation of office—Judges

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

Substitution

25 13. Section 21 of the Principal Act is repealed and the following section substituted:

Distinction between court and chambers

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

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

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

Trial by jury in civil proceedings

14. Section 22 of the Principal Act is amended by omitting subsection (3).

Substitution

5 15. Sections 34 and 35 of the Principal Act are repealed and the following sections substituted:

Injunctions

10 “34. At any stage of proceedings, the Court may grant an injunction (interlocutory or otherwise) on such terms as the Court thinks fit if it appears to the Court to be just to do so.

“(2) Without limiting the generality of subsection (1), the Court may grant an injunction to restrain any threatened or apprehended waste, trespass, breach of contract or other injury.

15 “(3) Subsection (2) applies in relation to a threatened waste or trespass to land whether or not—

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

Receivers

“34A. At any stage of proceedings, the Court may, by interlocutory order on such terms as the Court thinks fit, appoint a receiver if it appears to the Court to be just to do so.

25 Prerogative remedies

“34B. (1) The Court has power to grant any relief or remedy by way of a writ of habeas corpus, mandamus, prohibition, certiorari or a writ of any other kind.

30 “(2) In proceedings in the Court for any relief or remedy of a kind referred to in subsection (1), the Court may, if it thinks fit, instead of directing the issue of the relevant writ, grant the relief or remedy sought by making an order to the like effect.

Rules of practice and procedure—judicial discretion

35 “35. In proceedings, where no provision about a matter of practice or procedure of the Court is made under this or any other law of the Territory,

the Court may give such directions as to practice and procedure as it thinks fit.”.

Rules of Court

5 16. (1) Section 36 of the Principal Act is amended by adding at the end the following subsection:

“(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;
- 10 (b) the appointment of a Judge, the Master, the Registrar or other officer of the Court or other person as an arbitrator or referee;
- (c) the fees to be paid to an arbitrator or referee;
- (d) the persons by whom such a fee, or part of such a fee, is payable;
- 15 (e) the consequences of a determination or report by an arbitrator or referee;
- (f) the manner in which a determination or report may be called in question;
- (g) whether or not, or to what extent, a determination or report may be called in question on a matter of fact or law;
- 20 (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.”.

25 (2) Rules of Court made under section 3 of the *Supreme Court (Arbitration) Ordinance 1990*, being such Rules as in force immediately before the commencement of this Act, are to be taken to have been made, and to continue in force, under subsection 36 (3) of the Principal Act as amended by this Act.

Appointment of Master

30 17. Section 40 of the Principal Act is amended by omitting from subsection (3) “65” and substituting “70”.

Term of office

18. Section 41 of the Principal Act is amended—

- 35 (a) by omitting from subparagraph (1) (b) (ii) “65” and substituting “70”; and

(b) by omitting subsection (2) and substituting the following subsection:

5 “(2) Subparagraph (1) (b) (i) does not authorise the Executive to appoint the Master for a term of office that will expire after he or she attains the age of 70 years.”.

Substitution

19. Section 42 of the Principal Act is repealed and the following sections are substituted:

Extension of term of office

10 “41A. (1) Before the expiry of the term of office of the Master, the Executive may, by instrument, extend the term for a specified period.

 “(2) Before the expiry of a term of office of the Master which has been extended under subsection (1) or this subsection, the Executive may, by instrument, further extend the term for a specified period.

15 “(3) This section does not authorise the Executive to extend or to extend further the term of office of the Master for a period that will expire after he or she attains the age of 70 years.

Terms and conditions not provided for by this Act

20 “41B. In relation to matters not provided for by this Act, the Master holds office on such terms and conditions (if any) as are determined in writing by the Executive.

Holding other offices

 “41C. (1) The Master is not, without the written approval of the Executive, entitled to—

25 (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

30 (b) accept appointment to another office under a law of the Territory, the Commonwealth, a State or another Territory.

 “(2) The Executive shall consult with the Chief Justice before giving the approval.

Oath or affirmation of office—Master

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

Appointment

20. (1) Section 46 of the Principal Act is amended by omitting subsections (2), (3) and (4) and substituting the following subsections:

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

“(3) The Deputy Registrars and the other officers referred to in paragraph (1) (a) shall be appointed by the Registrar.

“(4) The Deputy Sheriffs shall be appointed by the Sheriff.

10 “(5) A person is not eligible to be appointed under subsection (3) or (4) unless he or she is a public servant.”

(2) A person who, immediately before the commencement of this Act, held an office referred to in subsection 46 (1) of the Principal Act shall, subject to the Principal Act as amended by this Act, continue to hold that office.

15 Insertion

21. After section 46 of the Principal Act the following section is inserted:

Acting appointments

“46A. (1) The Attorney-General may appoint—

- 20 (a) a person to act as the Registrar; and
(b) a person to act as the Sheriff;

during—

- (c) a vacancy in the office of Registrar or Sheriff, as the case requires; or
25 (d) any period when the Registrar or Sheriff, as the case requires, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of office.

“(2) A person appointed under subsection (1) shall not continue to act for more than 12 months.

30 “(3) Anything done by or in relation to a person purporting to act as the Registrar or Sheriff is not invalid merely because—

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

(c) the occasion to act had not arisen or had ceased.

“(4) A person appointed under subsection (1) to act as Sheriff has the rights, privileges, immunities and liabilities of the Sheriff.”

Sheriff's assistants

5 **22. (1) Section 53 of the Principal Act is amended—**

(a) by omitting subsection (1) and substituting the following subsection:

“(1) The Sheriff may appoint persons who are public servants to assist in the performance of the Sheriff's functions.”; and

10 (b) by omitting subsection (4).

(2) A person who, immediately before the commencement of this Act, held an appointment under subsection 53 (1) of the Principal Act shall be taken to have been appointed under subsection 53 (1) of the Principal Act as amended by this Act.

15 **Insertion**

23. After section 60 of the Principal Act the following section is inserted:

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

“60A. (1) This section applies where—

20 (a) a Judge or the Master would, but for this section, cease to hold office under this Act; and

(b) at the time that the Judge or Master would otherwise have ceased to hold office, proceedings were being heard by him or her but had not been finally determined.

25 “(2) Where this section applies in relation to a Judge or the Master, he or she continues to hold office for the purposes of the transitional proceedings.

30 “(3) Where this section applies in relation to a Judge or the Master, he or she may continue to exercise the jurisdiction of the Court for the purposes of hearing and determining transitional proceedings.

“(4) A judgment given or entered in transitional proceedings, or an order (including an order as to costs) made in such proceedings, is a valid and effectual exercise of the Court's jurisdiction, and may be enforced accordingly.

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

“(6) In this section—

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

Substitution

5 24. Section 67 of the Principal Act is repealed and the following section substituted:

Oaths and affirmations

10 “67. (1) The forms of oath or affirmation to be used in or for the purpose of proceedings in the Court shall, subject to this or any other Act, be such as are prescribed by the Rules of Court.

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

Substitution

15 25. Section 75 of the Principal Act is repealed and the following section substituted:

Regulations

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

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

Addition

25 26. The Principal Act is amended by adding at the end the Schedule set out in Schedule 1.

Formal amendments

 27. (1) The Principal Act is further amended as set out in Schedule 2.

30 (2) The Acts specified in Schedule 3 are amended as set out in that Schedule.

Repeal of *Supreme Court Act 1952*

 28. The *Supreme Court Act 1952* is repealed.

SCHEDULE 1

Section 26

SCHEDULE

Sections 19, 42 and 48

OATHS AND AFFIRMATIONS OF OFFICE***Form 1—Chief Justice, Judges and Master*****Oath**

“I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, and Her Heirs and Successors, in the office of [*Chief Justice/*Judge/*Master] of the Supreme Court of the Australian Capital Territory, and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will, so help me God.”

Affirmation

“I, _____, do solemnly and sincerely affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, and Her Heirs and Successors, in the office of [*Chief Justice/*Judge/*Master] of the Supreme Court of the Australian Capital Territory, and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.”

* State whichever is applicable.

Form 2—Registrar**Oath**

“I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second and Her Heirs and Successors, and that I will well and truly serve Her in the office of Registrar of the Supreme Court of the Australian Capital Territory, so help me God.”

Affirmation

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

SCHEDULE 2

Subsection 27 (1)

FORMAL AMENDMENTS

Section 2 (definition of "additional Judge")—

Omit "(2) of section 4", substitute "4 (3)".

Section 2 (definitions of "Deputy Registrar" and "Master")—

Omit "Supreme".

Section 2 (definition of "President")—

Omit "appointed under the *Administrative Appeals Tribunal Act 1989* of the Territory".

Section 2 (definitions of "enactment", "Ordinance", "the Court", "the Judicature Act", "the Registrar", "the Sheriff", "the Supreme Court" and the combined definition of "the Territory" or "the Australian Capital Territory")—

Omit the definitions.

Section 2—

Insert the following definitions:

" 'Full Court' means the Court constituted by not less than 3 Judges sitting together;

'Court' means the Supreme Court;

'Judicature Act' means the *Supreme Court of Judicature Act 1873* (36 & 37 Vic., Cap. 66) of the United Kingdom;

'pre-Judicature Act proceedings' means proceedings in the English Court of Chancery immediately before the commencement of the Judicature Act;

'process of the Court' includes a writ, summons, order, warrant and precept issued by the Court;

'Registrar' means the Registrar of the Court;

'Sheriff' means the Sheriff of the Territory;".

Subsections 4 (1) to (5) (inclusive)—

Omit the subsections, substitute the following subsections:

"(1) The Executive may by commission appoint, as resident Judges, a Chief Justice of the Court and other Judges of the Court.

SCHEDULE 2—continued

“(2) A person is not eligible to be appointed as a resident Judge—

(a) unless he or she—

- (i) is or has been a Judge of a superior court of record of the Commonwealth, a State or a Territory; or
- (ii) has been enrolled for not less than 5 years as a legal practitioner of the High Court or of the Supreme Court of a State or Territory; or

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

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

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

“(5) An additional Judge ceases to hold office on ceasing to hold office as a Judge (other than as an additional Judge) of a superior court of record of the Commonwealth, a State or another Territory.”

Subsection 4 (6)—

Omit “Assembly praying for his”, substitute “Legislative Assembly praying for his or her”.

Subsection 4 (7)—

Omit the subsection, substitute the following subsection:

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

Subsection 8 (1)—

Omit all the words after “jurisdiction of the”, substitute “Court is exercisable by a single Judge”.

Subsection 9 (1)—

Omit “court”, substitute “Court”.

Paragraph 9 (2) (a)—

Omit “one”, substitute “a single”.

SCHEDULE 2—continued

Paragraph 9 (2) (b)—

Omit “Court constituted by not less than 3 Judges”, substitute “Full Court”.

Subsection 10 (1)—

Omit “court”, substitute “Court”.

Subsection 10 (2)—

Omit “one”, substitute “a single”.

Subsection 12 (1)—

Omit “of the Territory”.

Paragraph 12 (1) (a)—

Omit “Court constituted by not less than 3 Judges; and”, substitute “Full Court;”.

Paragraph 12 (1) (b)—

Omit “must”, substitute “shall”.

Subparagraph 12 (1) (b) (i)—

Omit “one”, substitute “1”.

Subparagraph 12 (1) (b) (ii)—

Omit “Court constituted by not less than 3 Judges”, substitute “Full Court”.

Paragraph 12 (1) (c)—

(a) Omit “must”, substitute “shall”.

(b) Omit “one”, substitute “1”.

Subsection 12 (2)—

(a) Omit “of the Territory must be exercised by the Court constituted by not less than 3 Judges”, substitute “shall be exercised by the Full Court”.

(b) Omit all the words after “appropriate”, substitute “to do so”.

Subsection 13 (1)—

Omit “one”, substitute “a single”.

SCHEDULE 2—continued**Subsections 13 (2) and (3)—**

(a) Omit “Supreme”.

(b) Omit “not less than three Judges”, substitute “the Full Court”.

Subsection 13 (4)—

Omit “either of the last two preceding subsections”, substitute “subsection (2) or (3)”.

Paragraph 13 (4) (a)—

Omit “not less than three Judges sitting together in Court”, substitute “the Full Court”.

Section 14—

Omit “three or more Judges sitting together in accordance with section 9, 11, 12 or 13 are”, substitute “the Full Court is”.

Paragraphs 15 (1) (a) and (b)—

Omit “one”, substitute “a single”.

Subsection 15 (2)—

Omit “one”, substitute “a single”.

Subsection 16 (1)—

Omit the subsection, substitute the following subsection:

“(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.”.

Subsection 16 (3)—

Omit “must”, substitute “shall”.

Subsection 17 (1)—

Omit “The Chief Justice and the other Judges appointed under subsection 4 (1) are to receive salary”, substitute “The resident Judges are to receive remuneration”.

Subsection 17 (4)—

Omit all the words after “payment”, substitute “to Judges of remuneration and allowances”.

SCHEDULE 2—continued

Subsections 17 (5) and (6)—

Omit the subsections, substitute the following subsections:

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

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

“(6) Where the amount of remuneration or allowances to which a Judge would be entitled as a Judge of the Court if subsection (5) did not apply exceeds the remuneration or allowances (as the case may be) to which he or she is entitled as a Judge of another superior court of record, the Judge is entitled to receive an additional amount equal to that excess.”

Subsection 18 (1)—

- (a) Omit “Supreme”.
- (b) Omit “the Commonwealth”, substitute “Australia”.

Subsections 18 (2) and (3)—

Omit “Supreme”.

Subsections 20 (1) and (2)—

Omit “Supreme”.

Subsection 22 (1)—

Omit “Supreme Court, unless the Court or the Judge”, substitute “Court, unless the Court”.

Subsection 22 (2)—

Omit “Supreme Court or the Judge”, substitute “Court”.

Subsection 23 (1)—

Omit “Supreme Court, and the Judge sitting in Chambers,”, substitute “Court”.

Subsection 23 (2)—

Omit the subsection, substitute the following subsection:

“(2) Subject to any other law of the Territory (including Rules of Court), the Court may determine—

SCHEDULE 2—continued

- (a) the amount of costs of and incidental to proceedings in the Court, including the administration of an estate or trust; and
- (b) by whom and to what extent such costs are to be paid.”.

Section 24—

Omit “Supreme”.

Section 25—

- (a) Omit “Supreme”.
- (b) Omit “the provisions of”.
- (c) Omit “of this Act”.

Sections 26 to 33 (inclusive)—

Repeal the sections, substitute the following sections:

Equities of plaintiff

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

Equities of defendant

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

Counter-claims and third parties

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

- (a) against the plaintiff, where the relief claimed would have been granted to the defendant if he or she had taken out a separate suit against the plaintiff; or
- (b) against a person other than the plaintiff, where—
 - (i) the relief claimed relates to the subject matter of the proceedings;
 - (ii) that person is duly served with written notice of the claim; and

SCHEDULE 2—continued

- (iii) the claim would have been granted to the defendant if he or she had taken out a separate suit against that person.

“(2) Where a person is duly served with a notice referred to in subparagraph (1) (b) (ii), he or she is to be taken to be a party to the relevant proceedings with the same rights as if the defendant had instituted a separate suit against the person.

Incidental equities

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

Defence or stay of proceedings instead of prohibition or injunction

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

“(2) A defence is available in proceedings where, in pre-Judicature Act proceedings of the same type, an injunction would previously have been available.

“(3) Nothing in this Act prevents the Court from directing a stay in any proceedings pending before it.

“(4) Upon the motion of any entitled person, the Court may grant a stay in any proceedings pending before it.

“(5) The Court may grant a stay of proceedings under subsection (4)—

- (a) generally or in relation to part only of the proceedings; and
- (b) subject to such other conditions as the Court thinks just.

“(6) In this section—

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

- (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.

SCHEDULE 2—continued**Common law and statute**

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

Final determination of matters

“32. (1) In the exercise of its jurisdiction under this Act in relation to proceedings in the Court, the Court shall, so far as practicable, ensure that—

- (a) all the matters in issue between the parties to the proceedings are finally determined; and
- (b) all multiplicity of legal proceedings concerning those matters is avoided.

“(2) For the purposes of subsection (1), the Court may grant legal or equitable relief absolutely or conditionally.

Law and equity

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

Subsection 36 (1)—

- (a) Omit “Judges appointed under subsection (1) of section 4 or any two of those”, substitute “resident Judges or any 2 of the resident”.
- (b) Omit “or any other Act, with regulations under this or any other Act, with any Ordinance or with any enactment”, substitute “Act or any other law of the Territory”.

Subparagraph 36 (1) (a) (i)—

Omit “Supreme”.

Paragraph 36 (1) (b)—

Omit the paragraph, substitute the following paragraph:

- “(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;”.

Paragraph 36 (1) (c)—

Omit “Supreme”.

SCHEDULE 2—continued

Paragraph 36 (1) (d)—

Omit “or by any Ordinance or enactment”, substitute “, by any other Act or by any Ordinance”.

Paragraph 36 (2) (d)—

Omit “a Territory”, substitute “another Territory”.

Paragraph 36 (2) (e)—

Omit “Supreme” (wherever occurring).

Subsection 39 (1)—

Omit “an Act, Ordinance or enactment, by Rules of Court”, substitute “this Act or any other law of the Territory”.

Subsection 39 (2)—

Omit the subsection.

Paragraph 46 (1) (a)—

Omit “Supreme” (wherever occurring).

Sections 47 and 48—

Repeal the sections, substitute the following sections:

Functions of Registrar and Deputy Registrars

“47. (1) The Registrar has power to administer oaths, and may perform such other functions as are assigned to the Registrar by or under this Act or any other law of the Territory, or by any special order of the Court.

“(2) Subject to this Act and to any directions of the Registrar, a Deputy Registrar may perform the functions of the Registrar under this or any other Act or under Rules of Court.

“(3) The performance of a function by a Deputy Registrar does not affect the power of the Registrar to perform that function.

Oath or affirmation of office—Registrar

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

Subsection 49 (1)—

Omit “Supreme”.

SCHEDULE 2—continued**Paragraph 49 (2) (a)—**

- (a) Omit “must be had and taken”, substitute “shall be”.
- (b) Omit “and” (last occurring).

Paragraph 49 (2) (b)—

Omit “and” (last occurring).

Subsection 49 (3)—

Omit the subsection, substitute the following subsection:

“(3) A Deputy Registrar shall not perform a function of the Registrar under this section.”.

Sections 50, 51 and 52—

Repeal the sections, substitute the following sections:

Functions of Sheriff

“50. The Sheriff shall—

- (a) serve or execute any process of the Court directed to him or her;
- (b) make due return to the Court of such process;
- (c) take due charge of any person committed to his or her custody by the Court; and
- (d) discharge any such person as directed by the Court or as required under a law of the Territory.

Deputy Sheriffs

“51. (1) Subject to the directions of the Sheriff, a Deputy Sheriff may perform the functions of the Sheriff under this Act or any other law of the Territory.

“(2) In performing the functions of the Sheriff, a Deputy Sheriff has all the rights, privileges, immunities and liabilities of the Sheriff.

“(3) The performance of a function by a Deputy Sheriff does not affect the power of the Sheriff to perform that function.

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

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

SCHEDULE 2—continued

this section, be directed to the Sheriff or the Deputy (as the case may be) shall be directed to a disinterested person appointed by the Court.

“(2) A person appointed under subsection (1) shall—

- (a) serve or execute a process directed to him or her; and
- (b) make due return of the process to the Court.

“(3) In performing the functions of the Sheriff or Deputy Sheriff, a person appointed under subsection (1) has all the rights, privileges, immunities and liabilities of the Sheriff or a Deputy Sheriff (as the case requires).”

Paragraph 53 (3) (a)—

Omit “exercise any powers or”, substitute “perform any”.

Section 54—

Omit “Act by an Ordinance or by an enactment”, substitute “or any other Act”.

Subsection 55 (1)—

Omit the subsection, substitute the following subsection:

“(1) In any proceedings in the Court, evidence may be given by affidavit—

- (a) of the service of any relevant document; or
- (b) of the signature of a party to the proceedings, or of his or her solicitor, to any relevant document.”

Subsection 55 (2)—

Omit “or a Judge”.

Subsections 55 (3) and (4)—

Omit the subsections, substitute the following subsection:

“(3) An order under subsection (2) may be made subject to such conditions as the Court thinks just, including the following:

- (a) that copies of a relevant affidavit be served on any specified party to the matter;
- (b) that a person whose evidence is given in a relevant affidavit attend the hearing to be available for cross examination.”

SCHEDULE 2—continued**Section 56—**

Omit “Supreme”.

Section 57—

Omit “Supreme Court or the Judge”, substitute “Court”.

Paragraph 57 (a)—

(a) After “oath”, insert “or affirmation”.

(b) Omit “or Judge”.

(c) Omit “; and at any place within the Commonwealth”, substitute “, at any place in Australia”.

Paragraph 57 (d)—

Omit “or Judge”.

Subsection 58 (1)—

(a) Omit “Supreme”.

(b) Omit all the words after “Court” (third occurring).

After subsection 58 (1)—

Insert the following subsection:

“(1A) The judgment referred to in subsection (1) in a cause does not prejudice a defendant in the cause who is not served with process and does not voluntarily submit to the jurisdiction of the Court.”.

Subsection 58 (2)—

(a) Omit “Supreme”.

(b) Omit “the Commonwealth”, substitute “Australia”.

Section 59—

Repeal the section, substitute the following section:

Amendment of defects

“59. (1) The Court may at any time, and on such terms as the Court thinks just, amend any defect or error in a proceeding in the Court.

“(2) An amendment under subsection (1) is to be made for the purpose of determining the real questions in issue in the proceedings.”.

SCHEDULE 2—continued

Subsection 60 (1)—

Omit “Supreme”.

Subsection 60 (2)—

Omit “or the Judge”.

Subsection 61 (1)—

(a) Omit “a Court constituted by not less than 3 Judges sitting together”, substitute “the Full Court”.

(b) Omit “one”, substitute “1”.

Subsection 61 (2)—

After “his”, insert “or her”.

Sections 62 and 63—

Repeal the sections, substitute the following section:

Change of venue

“63. (1) At any stage of proceedings on a cause or matter in the Court, the Court may order that the cause or matter be heard at a specified place within Australia, or continued at another specified place within Australia, subject to subsection 18 (1) and to such conditions as are specified in the order.

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

Section 64—

(a) Omit “Supreme” (first occurring).

(b) Omit all the words after “Territory”.

(c) Add at the end the following subsection:

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

Section 65—

Repeal the section, substitute the following section:

SCHEDULE 2—continued**Use of Seals**

“65. All writs, commissions and process issued from the Court are to be—

- (a) in the name of the Crown;
- (b) under the Seal of the Court or such other seal as is prescribed by Rules of Court; and
- (c) signed by the Registrar or an officer authorised by the Registrar.”.

Section 66—

Omit “Supreme”.

Subsection 68 (1)—

- (a) Omit “the next succeeding subsection”, substitute “subsection (2)”.
- (b) Omit “Supreme”.

Subsection 68 (2)—

Omit “the last preceding subsection”, substitute “subsection (1)”.

Subsection 68 (3)—

Omit “Supreme Court or the Judge”, substitute “Court”.

Paragraph 68 (3) (b)—

After “him” (wherever occurring), substitute “or her”.

Subsection 68 (4)—

- (a) Omit “Supreme”.
- (b) Omit “he”, substitute “the person”.

Subsection 68 (5)—

- (a) Omit “The last preceding subsection”, substitute “Subsection (4)”.
- (b) Omit “one” (first occurring), substitute “1”.
- (c) Omit “the one”, substitute “a single”.

Subsection 68 (6)—

- (a) Omit “Supreme”.
- (b) Omit “in writing”.
- (c) Omit “under his hand”.

SCHEDULE 2—continued

Subsection 69 (1)—

(a) Omit “Supreme Court or the Judge”, substitute “Court”.

(b) Omit “, either”.

Paragraph 69 (1) (a)—

Omit “or the Judge, as the case may be,”.

Subsection 69 (3)—

(a) Omit “or the Judge in its or his absolute discretion”.

(b) Omit “or the Judge” (last occurring).

Section 71—

Omit all the words from and including “A Judge” to and including “authority to hold”, substitute “The Court may hold persons”.

Section 72—

Repeal the section.

Section 73—

(a) Omit “Supreme”.

(b) Omit “part of the Commonwealth”, substitute “Territory”.

Section 74—

(a) Omit “Supreme”.

(b) Omit “of his”.

SCHEDULE 3

Subsection 27 (2)

FORMAL AMENDMENTS OF OTHER ACTS

Administration and Probate Act 1929

Section 125B—

Omit all the words from and including “payable” to and including “Commonwealth”, substitute “determined under subsection 37 (1) of the *Supreme Court Act 1933*”.

SCHEDULE 3—continued***Administrative Appeals Tribunal Act 1989*****Paragraph 46 (3) (b)—**

Omit “*Australian Capital Territory Supreme Court Act 1933 of the Commonwealth*”, substitute “*Supreme Court Act 1933*”.

Administrative Decisions (Judicial Review) Act 1989**Subsection 3 (1) (definition of “Rules of Court”)—**

Omit “*Australian Capital Territory Supreme Court Act 1933 of the Commonwealth*”, substitute “*Supreme Court Act 1933*”.

Crimes Act 1900**Paragraph 556D (10) (a)—**

(a) Omit “section fifty-three of the *Australian Capital Territory Supreme Court Act 1933-1968 of the Commonwealth*”, substitute “subsection 68 (1) of the *Supreme Court Act 1933*”.

(b) Omit “of the Australian Capital Territory”.

Interpretation Act 1967**Subsection 14 (1)—**

Insert the following definition:

“ ‘Judge’, in relation to the Supreme Court, means a resident Judge, an additional Judge or an acting Judge within the meaning of the *Supreme Court Act 1933*;”.

Section 16—

Repeal the section.

Juries Act 1967**Subsection 6 (1) (definition of “civil trial”)—**

Omit “section 14 of the *Australian Capital Territory Supreme Court Act 1933-1966*”, substitute “subsection 22 (2) of the *Supreme Court Act 1933*”.

Subsection 6 (1) (definition of “Judge”)—

Omit the definition, substitute the following definition:

“ ‘Judge’ means a Judge of the Supreme Court;”.

Section 21—

Repeal the section, substitute the following section:

SCHEDULE 3—continued

Interpretation

“21. In this Part—

‘*Sheriff*’ includes any person performing the functions of the Sheriff in accordance with section 52 of the *Supreme Court Act 1933*.”.

Legal Practitioners Act 1970

Section 5 (definition of “Chief Justice”)—

Omit “*Australian Capital Territory Supreme Court Act 1933* of the Commonwealth”, substitute “*Supreme Court Act 1933*”.

Section 5 (definition of “Rules of Court”)—

Omit “28 of the *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth”, substitute “36 of the *Supreme Court Act 1933*”.

Paragraph 10 (2) (b)—

Omit “Judges appointed under subsection 7 (1) of the *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth”, substitute “resident Judges within the meaning of the *Supreme Court Act 1933*”.

Subsection 79A (1) (definition of “pecuniary loss”, paragraph (c))—

Omit all the words after “interest” (last occurring), substitute “calculated at the rate fixed under the Supreme Court Rules for the purposes of section 70 of the *Supreme Court Act 1933*”.

Magistrates Court Act 1930

Section 5 (definition of “Judge”)—

Omit the definition, substitute the following definition:

“ ‘Judge’ means a Judge of the Supreme Court;”.

Magistrates Court (Civil Jurisdiction) Act 1982

Paragraph 228 (2) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) be calculated at the rate fixed under the Supreme Court Rules for the purposes of section 70 of the *Supreme Court Act 1933*; and”.

SCHEDULE 3—continued***Occupational Health and Safety Act 1989*****Paragraph 84G (2) (b)—**

Omit “the Rules of Court made under the *Australian Capital Territory Supreme Court Act 1933* of the Commonwealth”, substitute “Rules of Court made under the *Supreme Court Act 1933*”.

Remand Centres Act 1976**Section 3 (definition of “Judge”)—**

Omit the definition, substitute the following definition:

“ ‘Judge’ means a Judge of the Supreme Court;”.

NOTE

1. Reprinted as at 1 July 1992. See also Act No. , 1993.

NOTE ABOUT SECTION HEADINGS

On the date of commencement of this Act, headings to sections of the *Supreme Court Act 1933* are altered as set out in the following table:

Section	Alteration
12	Omit “of the Territory”.
13	Omit “not less than 3 Judges”, substitute “the Full Court”.

**NOTE ABOUT FOOTNOTES TO
IMPERIAL ACTS APPLICATION ACT 1986**

On the date of commencement of this Act, footnotes of Parts of Schedule 3 to the *Imperial Acts Application Act 1986* are altered as set out in the following table:

Schedule 3	Alteration
Part 12, Note 5	Omit “ <i>Australian Capital Territory Supreme Court Act 1933</i> of the Commonwealth”, substitute “ <i>Supreme Court Act 1933</i> ”.
Part 17, Note	Omit “7 and 8B of the <i>Australian Capital Territory Supreme Court Act 1933</i> ”, substitute “48D and 73 of the <i>Australian Capital Territory (Self-Government) Act 1988</i> ”.
Part 27, Note 3	Omit “11 (a) of the <i>Australian Capital Territory Supreme Court Act 1933</i> of the Commonwealth did”, substitute “20 (1) (b) of the <i>Supreme Court Act 1933</i> does”.

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