



## NORTHERN TERRITORY OF AUSTRALIA

No. 37 of 1987

### AN ACT

to amend the *Supreme Court Act*, to ratify, validate and approve the Rules of the Supreme Court conditionally made by the Judges of the Supreme Court on 31 July 1987, to make provision for the amendment of those Rules in certain circumstances, to adjust the procedure and practice of the Supreme Court during an interim period, to amend the *Limitation Act*, and for related purposes

[Assented to 13 October, 1987]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

#### PART I - PRELIMINARY

##### 1. SHORT TITLE

This Act may be cited as the *Supreme Court (Rules of Procedure) Act 1987*.

##### 2. COMMENCEMENT

(1) Sections 1 and 2 shall come into operation on the day on which the Administrator's assent to this Act is given.

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

##### 3. PRINCIPAL ACT

The *Supreme Court Act* is in this Act referred to as the Principal Act.

4. REPEAL

(1) The Rules of the Supreme Court of the Northern Territory of Australia comprising the Statutory Rules and Regulations specified in the Schedule (other than Orders 64 and 69, and the Second and Fourth Schedules to, those Rules) are repealed.

(2) The Supreme Court (Justices Appeals) Rules, comprising Statutory Rules 1969, No. 167, are repealed.

5. DEFINITION

In this Act "new Rules" means the Rules of the Supreme Court ratified, validated and approved under section 6(1) or, except in section 7, those Rules as amended from time to time.

PART II - VALIDATION OF RULES

6. VALIDATION OF NEW RULES

(1) The Rules of the Supreme Court conditionally made by the Judges of the Supreme Court on 31 July 1987 and subsequently tabled in the Legislative Assembly are by this Act ratified, validated and approved.

(2) The new Rules are for all purposes (including for the purpose of being amended) to be taken to be Rules of Court duly made under the Principal Act by the Judges of the Supreme Court.

7. CONFLICT BETWEEN NEW RULES, &c., AND ACTS

To the extent that the new Rules are, or a direction under section 9 is, inconsistent with the Principal Act as amended by this Act or with any other Act, those Rules or that direction, as the case may be, shall prevail.

PART III - INTERIM PROVISIONS

8. AMENDMENT OF RULES

For the purposes only of avoiding an inconsistency in the new Rules or between the new Rules and -

(a) the Principal Act as amended by this Act; or

(b) any other Act,

the Judges of the Supreme Court who are not acting or additional Judges, or a majority of them, may make Rules of Court amending the new Rules notwithstanding that, but for this section, they may not have the power to make such Rules of Court.

9. CHIEF JUSTICE MAY GIVE DIRECTIONS

(1) For the purpose only of avoiding an inconsistency in the new Rules or between the new Rules and -

- (a) the Principal Act as amended by this Act; or
- (b) any other Act,

but without limiting the Chief Justice's powers under section 72 of the Principal Act as amended by this Act, the Chief Justice may give directions relating to a matter of practice or procedure of the Court notwithstanding that, but for this section, the Chief Justice may not have the power to give such a direction, and the matter shall be governed according to those directions.

(2) A direction given under subsection (1) which, but for that subsection, was beyond the power of the Chief Justice to give shall, unless sooner approved by Rules of Court made under section 8, have no force or effect after the expiration of 6 months after the date on which it was given.

10. TIME LIMIT ON EXERCISE OF POWER UNDER THIS PART

Rules of Court shall not be made under section 8 nor a direction given under section 9(1) later than 5 years after the commencement of this Act (other than sections 1 and 2 of this Act).

PART IV - CONSEQUENTIAL AMENDMENTS

11. INTERPRETATION

Section 9 of the Principal Act is amended -

- (a) by omitting the definition of "Rules" and substituting the following:

"'Rules' means the Rules of Court made under this Act or ratified, validated and approved under the *Supreme Court (Rules of Procedure) Act 1987*"; and

- (b) by adding at the end the following:

"(2) In this or any other Act or an instrument of a legislative or administrative character, a reference to -

- (a) a rule or decree of the Court shall be taken to be a reference to an order of the Court; or
- (b) a writ of prohibition, mandamus or certiorari by which the Court had before the commencement of Parts II and IV of the *Supreme Court (Rules of Procedure) Act 1987* jurisdiction to grant

relief or a remedy shall be taken to be a reference to the judgment by which the Court may, after that commencement, grant that relief or remedy under this Act and the Rules."

12. NEW SECTION

The Principal Act is amended by inserting in Part I, after section 9, the following:

"9A. ABOLITION OF DISTINCTION BETWEEN COURT AND CHAMBERS

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

"(2) Nothing in subsection (1) alters the practice and procedure of the Court with respect to business that can be conducted otherwise than in open court.

"(3) The business of the Court, whether conducted in court or otherwise, shall be taken to be conducted in court.

"(4) Where by or under this or any other Act in force immediately before the commencement of Parts II and IV of the *Supreme Court (Rules of Procedure) Act 1987* a jurisdiction, power or authority is vested in a Judge -

- (a) the jurisdiction, power or authority may be exercised in accordance with this Act and the Rules by the Court in all respects as that Judge might have done; and
- (b) the Court constituted in accordance with this Act and the Rules has jurisdiction, power and authority co-ordinate with the jurisdiction, power and authority of the Judge.

"(5) where by or under this or any other Act in force immediately before the commencement of Parts II and IV of the *Supreme Court (Rules of Procedure) Act 1987* a jurisdiction, power or authority is vested in the Court or in a Judge by the use of the words 'the Court', 'the Court or a Judge' or 'a Judge of the Supreme Court', or by words referring to the Court or to a Judge, that jurisdiction, power or authority may be exercised by the Court in accordance with this Act and the Rules.

"(6) Subsection (5) has effect notwithstanding that the Act vesting jurisdiction, power or authority in the Court or in a Judge designates the Court or Judge as the court, judge, arbitrator or person appointed to hear and determine a matter and notwithstanding that the determination is expressed to be final or without appeal, but where the determination is expressed to be final or without appeal an appeal does not lie from a determination of the Court."

13. CONSTITUTION

Section 11 of the Principal Act is amended -

(a) by omitting subsections (1) and (2) and substituting the following:

"(1) The Court consists of the Judges and the Master.

"(2) The Court shall be constituted by a Judge or Judges or, in a case where an Act or the Rules provide that it may be constituted by the Master, by the Master, sitting and exercising the jurisdiction of the Court."; and

(b) by omitting subsection (3).

14. EXERCISE OF JURISDICTION

Section 15 of the Principal Act is amended -

(a) by omitting from paragraph (b) "sitting in Court"; and

(b) by omitting "paragraph (c)".

15. REPEAL

Section 16 of the Principal Act is repealed.

16. FULL COURT

Section 21(2) of the Principal Act is amended by omitting "make" (first occurring) and substituting "made".

17. EXERCISE OF APPELLATE JURISDICTION

Section 52 of the Principal Act is amended -

(a) by omitting from subsection (3) "sitting in Court or in Chambers"; and

(b) by omitting subsection (4).

18. INJUNCTIONS AND RECEIVERS

Section 69(1) of the Principal Act is amended by omitting "a mandamus or".

19. CHANGE OF VENUE

Section 83(3) of the Principal Act is amended by omitting "to a Judge in Chambers".

20. AMENDMENT OF LIMITATION ACT

The *Limitation Act* is amended by inserting in Division 2 of Part IV, before section 49, the following:

"48A. ABROGATION OF RULE IN *WELDON v NEAL*

"(1) If a court would, but for the expiry of a relevant period of limitation after the day a proceeding in the court has commenced, allow a party to amend a document in the proceeding, the court shall allow the amendment to be made if it is satisfied that no other party to the proceeding would be prejudiced by reason of the amendment or defence in the conduct of that party's claim or defence in a way that could not be met by an adjournment, an award of costs or otherwise.

"(2) This section does not apply to an amendment in a proceeding commenced before the commencement of this section."

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SCHEDULE

Section 4

STATUTORY RULES AND REGULATIONS COMPRISING  
RULES OF THE SUPREME COURT OF THE  
NORTHERN TERRITORY OF AUSTRALIA

1966	No. 178
1967	No. 14
1970	No. 208
1972	No. 86
1974	No. 102
1974	No. 103
1975	No. 164
1978	No. 18
1980	No. 42
1981	No. 6
1982	No. 4
1982	No. 37
1983	No. 33
1986	No. 4
1986	No. 27
1987	No. 17