

NORTHERN TERRITORY OF AUSTRALIA

SUPREME COURT ACT 1979

As in force at 1 June 2023

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 June 2023

SUPREME COURT ACT 1979

An Act to create the Supreme Court of the Northern Territory of Australia in place of the Supreme Court previously established by the *Northern Territory Supreme Court Act 1961* of the Commonwealth

Part I Preliminary

1 Short title

This Act may be cited as the *Supreme Court Act 1979*.

2 Commencement

The several Parts of this Act shall come into operation on such dates as are fixed by the Administrator by notice in the *Gazette*.

3 Proceedings in, and appeals to, former Supreme Court

Subject to the Rules and to any directions given by a Judge with respect to matters of practice and procedure:

- (a) all proceedings in the former Supreme Court, whether civil or criminal (including proceedings by way of appeal) that were pending or incomplete at the commencement of this Act may be continued and completed in the Court as if they had been instituted in the Court; and
- (b) where, in relation to a judgment of a court, authority, board, tribunal, person or other body given or pronounced before the commencement of this Act, an appeal lay, at the commencement of this Act, to the former Supreme Court (whether or not subject to conditions as to leave to appeal or other conditions), a like appeal, subject to the like conditions, if any, lies to the Court, and for that purpose the Court may exercise any power or jurisdiction that belonged to the former Supreme Court.

4 Judgments and Rules of former Supreme Court

- (1) The judgments of the former Supreme Court subsisting at the commencement of this Act continue in force, and this Act and all other laws in force in the Territory apply in relation to them, as if they were judgments of the Court.
- (2) The Rules of Court that were in force under the repealed Act, including rules that were continued in force by that Act, immediately before the commencement of this Act continue in force, *mutatis mutandis*, and subject to any directions of the Court in a particular case, as if made under this Act, but may be amended or repealed by Rules of Court made under this Act.

5 Records of former Supreme Court

The records of the former Supreme Court, and all records of the superior court of record of the Territory that were kept under a law at any time in force in the Territory and that, immediately before the commencement of this Act, were in the custody or control of the former Supreme Court or of an officer of that Court, shall be incorporated with, and shall be deemed to form part of, the records of the Court.

6 References to former Supreme Court, &c.

- (1) A reference, in a law that was in force in the Territory before the commencement of this Act, to the former Supreme Court, or to the Chief Judge, the senior Judge, a Judge or an officer of the former Supreme Court, shall be read as, or as including, a reference to the Court, or to the Chief Justice, the senior Judge, a Judge or an officer of the Court, as the case may be.
- (2) A reference, in a law that was in force in the Territory before the commencement of this Act, to the repealed Act or to the *Supreme Court Ordinance 1911*, or that Ordinance as amended, shall be read as including a reference to this Act.
- (3) A reference, in a law that was in force in the Territory before the commencement of this Act, to rules of the Supreme Court, or to rules made under a provision of:
 - (a) the repealed Act; or
 - (b) the *Supreme Court Ordinance 1911*, or that Ordinance as amended,

shall be read as including a reference to the Rules of Court made under this Act.

7 Judges of former Supreme Court

- (1) Upon the commencement of this Act, the person who, immediately before the commencement of this Act, held office as the Chief Judge of the former Supreme Court:
 - (a) holds office as a Judge of the Court as though he had been appointed under this Act to be a Judge of the Court;
 - (b) is the senior Judge of the Court; and
 - (c) shall not be required to take an oath or affirmation before his appointment as Chief Justice, but shall be required to take an oath or affirmation upon his appointment as Chief Justice.
- (2) Upon the commencement of this Act, each person who, immediately before the commencement of this Act, held office as a Judge of the former Supreme Court, but was not the Chief Judge or an additional Judge of the former Supreme Court:
 - (a) holds office as a Judge of the Court as though he had been appointed under this Act to be a Judge of the Court;
 - (b) has the seniority, as between himself and the other Judges who hold office by virtue of this subsection, that he had immediately before the commencement of this Act; and
 - (c) shall, before proceeding to discharge the duties of his office under this Act, take before the Administrator, or before a person appointed by the Attorney-General in that behalf, an oath or affirmation in accordance with one of the forms in the Schedule.

8 Officers of former Supreme Court

- (1) A person who was, or was acting as, an officer of the former Supreme Court immediately before the commencement of this Act continues in the equivalent office or to act, as the case may be, after the commencement of this Act as if he were appointed, or appointed to act, under, or after the commencement of, this Act.
- (2) A person who continues in an office by virtue of subsection (1) shall not be required to take an oath upon the commencement of this Act.

9 Interpretation

(1) In this Act, unless the contrary intention appears:

acting Judge means a person appointed under this Act to act as a Judge.

additional Judge means a person appointed under this Act to be an additional Judge.

Associate Judge means an Associate Judge of the Court, and includes a person authorised to act in the office of Associate Judge.

Chief Justice means the Chief Justice of the Court, and includes a Judge for the time being performing the duties and exercising the powers of the Chief Justice.

Court or **Supreme Court** means the Supreme Court of the Northern Territory of Australia established by this Act.

Court of Appeal means the Court of Appeal of the Northern Territory of Australia within the meaning of section 51(2).

defendant includes a person against whom relief is sought in a proceeding or who is required to attend as a party to a proceeding.

former Supreme Court means the Supreme Court of the Northern Territory of Australia as established by law immediately before the commencement of this Act.

Full Court means the Court, not being the Court of Appeal, constituted by not less than 3 Judges.

Judge means a Judge of the Court, and includes a person who is:

- (a) the Chief Justice;
- (b) an additional Judge; or
- (c) an acting Judge.

judgment includes a decree, order, declaration, determination, finding (including a finding of guilt), conviction or sentence, and a refusal to make a decree, order, declaration, determination or finding, whether final or otherwise.

Judicature Act means The Supreme Court of Judicature Act, 1873 of the United Kingdom.

plaintiff includes a person seeking relief against another person by any form of proceeding in the Court.

practice and procedure includes matters relating to costs, the method of pleading, the attendance of witnesses, the custody or bail of accused, persons found guilty of an offence or convicted persons and the enforcement and execution of judgments.

proceeding means a proceeding in the Court whether between parties or not, and includes:

- (a) a cause, action, suit or matter;
- (b) an incidental proceeding in the course of, or in connection with, a cause, action, suit or matter;
- (c) a criminal proceeding, where the context so permits; and
- (d) an appeal.

Registrar means a Registrar or an acting Registrar appointed under this Act.

repealed Act means the *Northern Territory Supreme Court Act 1961* of the Commonwealth, or that Act as amended at any time.

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

Seal means the Seal of the Court.

Sheriff means the Sheriff of the Territory.

Note for subsection (1)

The Interpretation Act 1978 contains definitions and other provisions that may be relevant to this Act.

- (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.

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.

Part II Constitution and jurisdiction of the Court

Division 1 Constitution

10 Establishment

There shall be a Court which, subject to section 51(2), shall be known as the Supreme Court of the Northern Territory of Australia.

11 Constitution

- (1) The Court consists of the Judges and the Associate Judges.
- (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 an Associate Judge, by an Associate Judge, sitting and exercising the jurisdiction of the Court.

11A Changes in constitution of Court during proceedings

- (1) If, in a criminal proceeding, the defendant pleads guilty and the proceeding is adjourned before the making of sentencing submissions commences, after that adjournment:
 - (a) the Court need not be constituted by the same person or persons as when the plea was entered; but
 - (b) the Court must then be constituted by the same person or persons until the proceedings are determined.
- (2) Further, if at any stage of a proceeding the person or one of the persons who constitutes the Court is unable to continue, the Court constituted by a different person or persons may continue to deal with the proceeding.
- (3) The question whether a person is unable to continue is decided by the Chief Justice and the Chief Justice's decision is not liable to be challenged on any ground.
- (4) This section does not limit the circumstances in which the Court may or may not be reconstituted during a proceeding.
- (5) In this section, a person is **unable to continue** if the person:
 - (a) dies; or
 - (b) vacates office; or

- (c) is, by reason of illness, injury or other cause, unable to continue dealing with the proceeding without unreasonable delay.

12 Superior court of record

The Court shall be the superior court of record of the Territory.

13 Principal seat, &c.

- (1) The principal seat of the Court shall be at Darwin.
- (2) The Court shall have power to sit and act at any time and at any place the Chief Justice directs, for the transaction of any part of the business of the Court, or for the discharge of any duty which by any law in force in the Territory is required to be discharged.

Division 2 Jurisdiction

14 Jurisdiction

- (1) In addition to the jurisdiction conferred on it elsewhere by this Act, the Court:
- (a) has jurisdiction:
- (i) in a proceeding between the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, and the Territory, or a person suing or being sued on behalf of the Territory;
- (ii) in a proceeding between the Territory, or a person suing or being sued on behalf of the Territory, and any other person, or a person suing or being sued on behalf of that other person; and
- (iii) in a proceeding between the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, and any other person, or a person suing or being sued on behalf of that other person;
- (b) has, subject to this Act and to any other law in force in the Territory, in relation to the Territory, the same original jurisdiction, both civil and criminal, as the Supreme Court of South Australia had in relation to the State of South Australia immediately before 1 January 1911;
- (c) has such jurisdiction, whether civil or criminal, as was, immediately before the commencement of this Act, vested in or conferred on the former Supreme Court or is from time to

time vested in or conferred on the Court by any law in force in the Territory (including a law passed or made before the commencement of this Act, as affected by section 6);

- (d) has jurisdiction in a proceeding in which a writ of mandamus or prohibition or an injunction or other relief is sought against an officer of the Commonwealth or of the Territory, being a proceeding arising in, or under a law in force in, the Territory; and
 - (e) has jurisdiction, with such exceptions and subject to such conditions as are provided by a law in force in the Territory, to hear and determine appeals from all judgments of inferior courts in the Territory given or pronounced after the commencement of this Act.
- (2) The jurisdiction of the Court referred to in subsection (1) is in addition to the jurisdiction that the Court has under any Imperial Act.

15 Exercise of jurisdiction

The jurisdiction of the Court, other than its appellate jurisdiction, is exercisable:

- (a) by the Full Court;
- (b) where it is not expressly provided that the jurisdiction of the Court shall be exercised by the Full Court, by one Judge;
- (d) as provided by Division 4, by an Associate Judge or a referee.

16 Transfer of proceedings to Local Court or Civil and Administrative Tribunal

- (1) A party to a civil proceeding may apply to the Court for the proceeding to be transferred to the Local Court or Civil and Administrative Tribunal if the matters for determination in the proceeding are within the jurisdiction of the Local Court or Tribunal at the time the application is made.
- (2) On an application under subsection (1), the Court may, if it considers it proper to do so in all the circumstances of the case, order that the proceeding be transferred to the Local Court or Tribunal, and may make such other orders as it thinks fit.
- (3) Subject to any order of the Court, a transferred proceeding shall be continued in the Local Court or Tribunal as if it had been originally commenced in the Local Court or Tribunal.

16A Transfer of proceedings from Civil and Administrative Tribunal

If the Civil and Administrative Tribunal makes a transfer order under section 99A of the *Northern Territory Civil and Administrative Tribunal Act 2014* to transfer a matter to the Court, the Act under which the jurisdiction is conferred on the Tribunal applies:

- (a) as if references in it to the Tribunal were references to the Court; and
- (b) with any other necessary changes.

17 Open Court

The Court may order the exclusion of the public or of persons specified by the Court from a sitting or a part of a sitting of the Court.

18 Declaration of right

- (1) The Court may, in relation to any matter in which it has jurisdiction, make binding declarations of right, whether or not any consequential relief is or could be claimed.
- (2) A proceeding is not open to objection on the ground that a declaratory order only is sought.

19 Determination of matter completely and finally

The Court shall, in every proceeding before it, grant, either absolutely or on such terms and conditions as it thinks just, all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by him in the proceeding, so that, as far as possible, all matters in controversy between the parties may be completely and finally determined and all multiplicity of proceedings concerning any of those matters avoided.

20 Orders and writs

The Court has power, in relation to matters in which it has jurisdiction, to make orders, including interlocutory orders, in such terms as it thinks fit and to issue, or direct the issue of, writs in such terms as it thinks fit.

Division 3 Full Court

21 Full Court

- (1) The Judge hearing a proceeding, not being a proceeding in the Court of Appeal in which the jurisdiction of the Court is exercisable by one Judge, or, if the hearing of such a proceeding has not commenced, any Judge, may refer that proceeding or part of that proceeding to the Full Court.
- (2) The Full Court may:
 - (a) accept;
 - (b) decline to accept; or
 - (c) accept in part only,

a reference made under subsection (1) and, in any event, may make such orders and give such directions as it thinks proper in relation to, and to the procedure to be followed in, the further conduct of the proceedings or part, as the case may be, including, in a case where evidence was received before the reference, orders and directions in relation to the use, if any, to be made of that evidence.

22 Exercise of jurisdiction relating to lawyers

- (1) If the Rules so provide, the Full Court must exercise:
 - (a) the jurisdiction of the Court to hear and determine a proceeding under the *Legal Profession Act 2006*; and
 - (b) the inherent jurisdiction of the Court to hear and determine a proceeding relating to the discipline of a lawyer.
- (2) If the proceeding involves a disputed question of fact, the Full Court may refer the question to a single Judge (who may be a member of the Full Court making the reference) to hear evidence and report his or her findings to the Full Court.
- (3) If the Full Court refers a question to a single Judge, the Full Court must review the evidence taken before the Judge and may exercise any one or more of the following powers:
 - (a) it may adopt the Judge's findings on the evidence with or without modification;
 - (b) it may set aside the Judge's findings on the evidence and make its own findings;

- (c) it may refer a question back to the Judge with a direction to hear further evidence.
- (4) If an appeal from the Legal Practitioners Disciplinary Tribunal is heard by the Full Court:
- (a) the appeal is to be by way of rehearing; and
 - (b) the Full Court has power:
 - (i) to draw its own inferences from evidence taken before the Tribunal; and
 - (ii) to refer a question back to the Tribunal with a direction to take further evidence, to reconsider the Tribunal's findings in the light of the further evidence and to report back to the Full Court; and
 - (iii) to receive further evidence in a manner the Full Court directs.
- (5) Although the Rules provide for jurisdiction in matters of a particular class to be exercised by the Full Court:
- (a) the Full Court may, if it thinks a particular matter would be more appropriately dealt with by a single Judge, refer the matter for hearing and determination by a single Judge; and
 - (b) a single Judge may exercise the Court's jurisdiction:
 - (i) in any matter of practice or procedure; or
 - (ii) to grant interlocutory relief necessary or desirable in the interest of justice; or
 - (iii) to deal with any other incidental matter.
- (6) If the Full Court refers a particular matter for hearing and determination by a single Judge under subsection (5)(a), an appeal lies against the judgment of the single Judge to the Full Court.
- (7) This section does not affect powers the Full Court has apart from this section in relation to evidence.

23 Majority judgments

If 3 or more Judges sitting together to constitute the Full Court are divided in opinion as to the decision to be given on any question, the question shall be decided:

- (a) if the Judges are not equally divided, according to the opinion of the majority; or
- (b) if the Judges are equally divided, according to the opinion of the senior of those Judges.

24 Reserved judgments

When any proceeding, after being fully heard before the Full Court, is ordered to stand for judgment, it shall not be necessary that all the Judges before whom it was heard shall be present together in Court to declare their opinions thereon, but:

- (a) the opinion of any of them may be reduced to writing and may be read or published by any other Judge at any subsequent sitting of the Full Court at which judgment in the proceeding is appointed to be delivered; and
- (b) in any such case the question shall be decided in the same manner, and the judgment of the Full Court shall have the same force and effect, as if the Judge whose opinion is so read or published had been present in Court and declared his opinion in person.

Division 4 Exercise of jurisdiction and referees

25 Jurisdiction by Associate Judge, etc.

The Rules may:

- (a) empower an Associate Judge to exercise the jurisdiction of the Court;
- (b) confer powers on the Registrar or on a person specified in the Rules; and
- (c) prescribe the circumstances in which, and the terms and conditions subject to which:
 - (i) an Associate Judge may exercise the jurisdiction of the Court; and
 - (ii) the Registrar or other person on whom powers are conferred by the Rules may exercise the powers.

26 Reference for report

- (1) Subject to the Rules, and to any right to have particular cases tried by a jury, the Court may by order refer to an Associate Judge or to a referee for inquiry and report any question arising in any civil proceeding.
- (3) Where a question is referred to an Associate Judge or a referee under subsection (1), the report of an Associate Judge or referee may be adopted wholly or partially and with or without modification by the Court and may, as so adopted, be enforced as a judgment.

27 Reference for trial

- (1) In any civil proceeding, except where the jurisdiction of the Court is exercisable only by the Full Court:
 - (a) if all the parties interested who are not under disability consent;
 - (b) if the proceeding requires any prolonged examination of documents, or any scientific or local investigation, which cannot, in the opinion of the Court, conveniently be made before a jury or conducted by the Court; or
 - (c) if the question in dispute consists wholly or in part of matters of account,

the Court may at any time order so much of the proceeding, or of any question or issue of fact arising therein, as in the opinion of the Court is proper, to be tried before an Associate Judge or before a referee agreed on by the parties or, in the absence of agreement, appointed by the Court.

- (2) Except where the jurisdiction of the Court is exercisable only by the Full Court, the Court may at any time order that an assessment of damages be tried before an Associate Judge.

28 Powers

Where the Court makes an order under section 26 or 27:

- (a) it may, subject to the Rules, make the order on such terms and conditions, including terms and conditions as to costs, as it thinks fit;
- (b) it may, subject to the Rules, give such directions as it thinks fit;

- (c) an Associate Judge or referee, as the case may be, may exercise the jurisdiction of the Court for the purpose of carrying out the order; and
- (d) if the order is an order that a matter be tried by or referred to a referee, the referee shall be deemed to be an officer of the Court.

29 Powers of Associate

Where an Associate Judge or a referee exercises the jurisdiction of the Court as provided by this Division, then, subject to the Rules and to the directions of the Court and, in the case of an order under section 26 or 27 to the terms of the order:

- (a) the Associate Judge or referee has and may exercise the authority, powers, functions, duties, privileges and immunities of the Court and of a Judge;
- (b) the Associate Judge or referee may, at any time, and shall, if so directed by the Court, state in the form of a special case for the opinion of the Court any question of law arising; and
- (c) the Associate Judge or referee may, if the Associate Judge or referee gives a judgment:
 - (i) subject to Part 4 of the *Personal Injuries (Liabilities and Damages) Act 2003*, order the inclusion of interest in any sum for which judgment is given; and
 - (ii) make an order as to costs.

30 Effect of judgment

A judgment given by an Associate Judge or a referee in the exercise of the jurisdiction of the Court has effect, subject to the Rules, as a judgment of the Court.

Division 5 Judges

32 Appointment of Judges

- (1) The Administrator may, by commission, appoint a person who has not attained the age of 72 years and:
 - (a) is or has been a Judge of a Court of the Commonwealth or of a State or Territory of the Commonwealth; or
 - (b) is a lawyer who has been admitted to the legal profession for at least 10 years;

to be:

- (c) the Chief Justice of the Court;
 - (d) a Judge of the Court; or
 - (e) an additional Judge of the Court.
- (2) The Administrator may, by commission, appoint a person who:
- (a) is or has been a Judge of a Court of the Commonwealth or of a State or Territory of the Commonwealth; or
 - (b) is a lawyer who has been admitted to the legal profession for at least 10 years;

to act as a Judge for such period, not exceeding 12 months but subject to subsection (4), and subject to such conditions and limitations, if any, as are specified in the commission.

- (3) While a person appointed under subsection (2) is acting as a Judge he has the authority, powers, functions, duties, privileges, immunities and jurisdiction of a Judge, but he shall not exercise them or constitute the Court, either alone or with another Judge, except subject to the conditions and limitations, if any, specified in his commission.
- (4) A person appointed under subsection (2) to act as a Judge is authorised to complete the hearing and determination of a proceeding that is pending before the person at the time of the expiration of his or her appointment.

33 Seniority

- (1) The Chief Justice is the senior Judge of the Court.
- (2) The Judges who are appointed by reference to section 32(1)(d) are senior to additional Judges and acting Judges and, as between themselves, have seniority according to the dates on which their commissions took effect and, in the case where 2 or more commissions took effect on the same date, according to the precedence assigned to them in their commissions.
- (3) The additional Judges are senior to acting Judges and, as between themselves, have seniority according to the dates on which their commissions took effect and, in the case where 2 or more commissions took effect on the same date, according to the precedence assigned to them in their commissions.

- (4) The acting Judges have seniority, as between themselves, according to the dates on which their commissions took effect and, in the case where 2 or more commissions took effect on the same date, according to the precedence assigned to them in their commissions.
- (5) Associate Judges have seniority, as between themselves, according to:
 - (a) the dates on which their commissions took effect; or
 - (b) in the case of 2 or more commissions that took effect on the same date, according to the precedence assigned to them in their commissions.

34 Chief Justice

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 the Chief Justice considers appropriate, make arrangements as to the Judge who is or the Judges who are to constitute the Court in particular matters or classes of matters.

35 Acting Chief Justice

Whenever:

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

the next senior Judge who is in the Territory and is able and willing to do so shall perform the duties, and may exercise the powers, of the Chief Justice.

36 Offices of profit

- (1) A Judge shall not, without the approval of the Attorney-General:
 - (a) accept another judicial commission; or
 - (b) accept an office of profit under the Crown.
- (2) Nothing in subsection (1) shall affect a judicial commission given before the commencement of this Act.

37 Oath of office

- (1) A Judge must take an oath in the form in Schedule 1 before discharging the duties of the office.

- (2) The oath must be administered by the Administrator or a person appointed by the Attorney-General to do so.

38 Retirement

A Judge, other than a Judge appointed under section 32(2), ceases to hold office on the Judge attaining the age of 75 years.

39 Resignation

A Judge may, by writing under his hand delivered to the Administrator, resign his office, but the resignation is not effective until it is accepted by the Administrator.

40 Removal from office

- (1) A Judge who is not an acting Judge may be removed from office by the Administrator on an address from the Legislative Assembly praying for his removal on the ground of proved misbehaviour or incapacity, but shall not otherwise be removed from office.
- (2) An acting Judge may be removed from office by the Administrator on the ground of proved misbehaviour or incapacity, but shall not otherwise be removed from office.
- (3) A Judge must not be removed from office under subsection (1) or (2) unless:
- (a) a report from an investigation panel is received by the Administrator under section 57 of the *Judicial Commission Act 2020*; and
 - (b) the investigation panel states in the report its opinion that the matter could justify the Judge's removal from office on the ground of proved misbehaviour or incapacity.

41 Remuneration

- (1) A Judge is to receive the following:
- (a) the salary and allowances as determined from time to time by the Administrator;
 - (b) subject to Division 5AA, other benefits as determined from time to time by the Administrator.
- (2) Salary to which a Judge is entitled under subsection (1) accrues from day to day and is payable monthly.

- (3) The salary, allowances and other benefits to which a Judge is entitled under subsection (1) or Division 5AA must not be altered to the Judge's detriment during the Judge's term of office.
- (4) Salaries, allowances and benefits payable under subsection (1) are to be paid from the public moneys of the Territory and the appropriation for that purpose is established or increased to the extent necessary.

Division 5AA Long service leave entitlements of Judges

41AA Application of Division

This Division does not apply to a Judge to whom the *Supreme Court (Judges Long Leave Payments) Act 1980* applies.

Note for section 41AA

See section 3A of the Supreme Court (Judges Long Leave Payments) Act 1980 in relation to the application of that Act.

41AB Meaning of *ordinary remuneration*

- (1) Subject to subsection (2), for this Division a Judge's ***ordinary remuneration*** is the remuneration the Judge is entitled to receive for service as a Judge.
- (2) If a Judge has worked in a part-time capacity at any time during a period of service to which an entitlement to long service leave relates, the Judge's ordinary remuneration is to be determined on a pro rata basis, based on the hours for which the Judge was remunerated during the period of service.

41AC Entitlement to long service leave

- (1) A Judge is entitled to 3 calendar months of long service leave after completing 10 years of service.
- (2) A Judge who has completed 10 years of service is entitled to 9 calendar days of long service leave for each subsequent year of completed service.
- (3) A Judge may accrue service in a full-time or part-time capacity or in a combination of those capacities.
- (4) A Judge does not accrue service when the Judge is:
 - (a) on leave without pay; or

- (b) absent from work because of an injury for which the Judge is receiving workers' compensation payments.

41AD Grants of long service leave

- (1) Long service leave may be granted:
 - (a) to a Judge, other than the Chief Justice – with the approval of the Chief Justice; and
 - (b) to the Chief Justice – with the approval of the Attorney-General.
- (2) A Judge may, in respect of an entitlement to long service leave, be granted a period of long service leave that is:
 - (a) equal to the period of the entitlement and paid the Judge's ordinary remuneration during the period of leave; or
 - (b) twice as long as the period of the entitlement and paid the Judge's ordinary remuneration at half pay during the period of leave; or
 - (c) at least half as long as the period of the entitlement and paid:
 - (i) during the period of leave – the Judge's ordinary remuneration; and
 - (ii) in respect of the remainder of the entitlement – a lump sum that is equal to the Judge's ordinary remuneration that would have been paid to the Judge if the entitlement had been taken as leave.

Example for subsection (2)(c)

A Judge entitled to 3 months of long service leave may elect to take 2 calendar months of long service leave and be paid a lump sum in lieu of taking the third month of the entitlement as long service leave. The Judge is paid the Judge's ordinary remuneration during the 2 month period of leave and a lump sum that is equal to the remuneration the Judge would have been paid during a third month of long service leave.

- (3) During a period of leave mentioned in subsection (2)(b), the Judge accrues service and service-based entitlements at half of the ordinary rate of accrual.

Note for subsection (3)

A service-based entitlement may include an entitlement to leave, including recreation or long service leave or an entitlement to a pension under the Supreme Court (Judges Pensions) Act 1980.

- (4) Long service leave may be granted in months and tenths of a month but may not be granted for a period of leave that is less than 7 days.
- (5) Weekends, public holidays and other days on which the Judge would not have ordinarily been required to work are part of long service leave and do not extend the period of leave.
- (6) A Judge may not be granted periods of long service leave that are separated by a Saturday, Sunday or public holiday.

41AE Payment in lieu

- (1) Subject to subsection (2), a Judge is entitled to payment in lieu of long service leave on cessation of employment as follows:
 - (a) if the Judge has completed 10 or more years of service – payment in lieu of the Judge's unused entitlement to long service leave at the date of cessation;
 - (b) if the Judge has completed a total of 9 years of service – payment for 67.5 calendar days of long service leave;
 - (c) if the Judge has completed a total of 8 years of service – payment for 45 calendar days of long service leave;
 - (d) if the Judge has completed a total of 7 years of service – payment for 22.5 calendar days of long service leave.
- (2) A Judge is not entitled to payment in lieu under subsection (1)(b) to (d) if the Judge is removed from office under section 40(1) on the ground of proved misbehaviour.
- (3) If a Judge dies, the Judge's personal representative is entitled to be paid an amount that would have been payable to the Judge under this section.
- (4) Payment of an entitlement under this section is to be based on the Judge's ordinary remuneration.

Division 5A Associate Judges

41A Appointment of Associate Judges

The Administrator may, on the recommendation of the Chief Justice, by commission, appoint a person who:

- (a) has not attained the age of 72 years; and

- (b) is a lawyer who has been admitted to the legal profession for at least 5 years;

to be an Associate Judge.

41B Office of profit

An Associate Judge shall not, without the approval of the Chief Justice, accept an office of profit under the Crown.

41C Remuneration

- (1) An Associate Judge shall receive:

- (a) salary at a rate;
(b) such allowances and at such rates; and
(c) subject to section 41G, such other benefits,

as are determined, from time to time, by the Administrator.

- (2) Salaries, allowances and benefits payable under subsection (1) are to be paid from the public moneys of the Territory and the appropriation for that purpose is established or increased to the extent necessary.
- (3) The salary, allowances and other benefits to which an Associate Judge is entitled under subsection (1) must not be altered to the Associate Judge's detriment during the Associate Judge's term of office.

41D Retirement

An Associate Judge, other than an acting Associate Judge, ceases to hold office on attaining the age of 72 years.

41E Resignation

An Associate Judge may, by writing delivered to the Administrator, resign from that office, but the resignation is not effective until it is accepted by the Administrator.

41F Removal of Associate Judge from office

- (1) The Administrator must remove an Associate Judge from office if the Associate Judge:
- (a) becomes incapable of performing the duties of the office, other than by reason of temporary illness; or

- (b) is guilty of misbehaviour.
- (2) However, an Associate Judge must not be removed from office under subsection (1) unless:
- (a) a report from an investigation panel is received by the Administrator under section 57 of the *Judicial Commission Act 2020*; and
 - (b) the investigation panel states in the report its opinion that the matter could justify the Judge's removal from office on the ground of proved misbehaviour or incapacity.

41G Rights of public servants

Where a person appointed as an Associate Judge under this Act was, immediately before the appointment, an employee within the meaning of the *Public Sector Employment and Management Act 1993* or any Act in substitution for that Act:

- (a) the person shall retain any existing and accruing benefits that the person was entitled to by virtue of the person's employment under that Act; and
- (b) the benefits determined under section 41C(1)(c) shall be not less than those which the person would, from time to time, be entitled to had the person continued to be employed under that Act.

41H Authorisation to act in office of Associate Judge

- (1) The Chief Justice may, in writing, authorise a lawyer (including a public sector employee) to act in the office of Associate Judge subject to the limitations or restrictions, if any, specified in the authorisation if:
- (a) there is a vacancy in the office of Associate Judge; or
 - (b) an Associate Judge is absent from duty or from the Territory or is unable, for any reason, to carry out the duties of the office.
- (2) A person authorised under subsection (1) may not act in the office of Associate Judge for a continuous period longer than 12 months.

41J Oath of office

- (1) An Associate Judge and, subject to subsection (2), a person authorized under section 41H to act in the office of Associate Judge shall, before proceeding to discharge the duties of the office, take an oath in the form in Schedule 2.
- (1A) The oath must be administered by the Chief Justice or a Judge of the Court.
- (2) Where a person authorized under section 41H has taken the oath under subsection (1) that person shall be deemed, by virtue of having taken the oath, to have complied with that subsection should that person at some later time be again authorized to act in the office of Associate Judge.

41K Powers of Associate Judge

- (1) An Associate Judge has power to administer oaths, and shall perform such duties in respect of a proceeding as are assigned to an Associate Judge by a law in force in the Territory, by the Rules or by order of the Court.
- (2) Where, under a law in force in the Territory, a power is exercisable, or a duty is to be performed, or a thing is to be or may be done, by a Registrar or other officer of the court, other than a Sheriff, it may be exercised, performed or done by an Associate Judge.
- (3) An Associate Judge is a Justice of the Peace for the Territory.

Division 6 Registries, Seals and officers

42 Registry

- (1) There shall be a Registry of the Court at Darwin.
- (2) The Attorney-General may authorize the establishment of additional Registries of the Court at such places in the Territory as he determines.

43 Seal

- (1) The Court must have a Seal for sealing writs and other documents issued out of the Court and required to be sealed.
- (2) The Seal must be of a design approved by the Chief Justice and must be inscribed with the words "The Seal of the Supreme Court of the Northern Territory of Australia".

(3) The Seal must be kept at such place and in such custody as the Chief Justice directs.

(4) The Seal may be applied to a document manually or electronically.

44 Stamps

(1) The Court must have, in addition to the Seal, a stamp or stamps of a design approved by the Chief Justice.

(2) A stamp referred to in subsection (1) must be kept at such place and in such custody as the Chief Justice directs.

(3) A document or a copy of a document marked with a stamp referred to in subsection (1):

(a) is as valid and effectual as if it had been sealed with the Seal; and

(b) may be marked with a stamp manually or electronically.

45 Judicial notice of Seal

All Courts and all persons acting judicially must take judicial notice of the Seal of the Court and of the mark of a stamp referred to in section 44(1), whether applied to a document manually or electronically, and must presume that it was applied by proper authority.

48 Appointment of Registrars

(1) The Attorney-General may appoint a person who is admitted or qualified to be admitted to the legal profession to be a Registrar of the Court.

(2) The Chief Justice may appoint a person who is admitted or qualified to be admitted to the legal profession to be an acting Registrar of the Court.

49 Powers of Registrars

(1) Subject to this Act and the Rules and to the directions of an Associate Judge, a Registrar has, and may exercise and perform, all the powers and functions of an Associate Judge under any law in force in the Territory.

(2) The appointment of a person to be a Registrar does not affect the exercise or performance of a power or function by an Associate Judge.

49A Independence of Associate Judges and Registrars

Except to the extent otherwise provided by or under this Act, an Associate Judge and a Registrar, in the exercise of their jurisdiction and powers and the performance of their functions under this Act, are not subject to the direction or control of any person or body.

50 Other officers

The Attorney-General may appoint such officers of the Court, in addition to Registrars and to the officers appointed under the *Sheriff Act 1962*, as he considers necessary.

Part III Court of Appeal**50A Application**

This Part does not apply to an appeal under Division 2 of Part X of the Criminal Code.

51 Right of appeal

- (1) Where the jurisdiction of the Court in a proceeding or a part of a proceeding was exercised otherwise than by the Full Court, a party to that proceeding may, subject to this Act, appeal to the Court from a judgment given in that proceeding or part, as the case may be.
- (2) The Court, when exercising its appellate jurisdiction under subsection (1), may be known as the Court of Appeal of the Northern Territory of Australia.

52 Exercise of appellate jurisdiction

- (1) Subject to this Act, the appellate jurisdiction of the Court under section 51(1) shall be exercised by the Court constituted by not less than 3 Judges.
- (2) One Judge sitting in Court may exercise the appellate jurisdiction of the Court under section 51(1):
 - (a) to direct the entry of any judgment by consent or make any order by consent;
 - (b) to dismiss an appeal for want of prosecution or for other prescribed cause; or
 - (c) to dismiss an appeal on the application of the appellant.

- (3) The appellate jurisdiction of the Court under section 51(1) may be exercised by a Judge:
 - (a) as provided by this Act, by the Rules or by any other law in force in the Territory; and
 - (b) in all matters of practice and procedure.
- (5) A party to an appeal may apply as of right to the Court of Appeal constituted by not less than 3 Judges to discharge or vary a judgment or direction of the Court of Appeal constituted otherwise, but may not otherwise appeal to the Court from a judgment of the Court of Appeal.

53 Appeal from interlocutory judgment

- (1) A party to a proceeding may not appeal under section 51(1) from an interlocutory judgment except by leave of the Court of Appeal.
- (2) An application for leave to appeal from an interlocutory judgment must be determined in the first instance on the papers by the Court of Appeal consisting of one Judge.
- (3) If the application is refused, the party is entitled to have the application determined by the Court of Appeal consisting of not less than 3 Judges.
- (4) An appeal from an interlocutory judgment of an Associate Judge or a referee must be heard by the Court of Appeal consisting of:
 - (a) one Judge – if leave to appeal is granted under subsection (2);
or
 - (b) 3 Judges – if leave to appeal is granted under subsection (3).

54 Evidence on appeal

The Court of Appeal shall have regard to the evidence given in the proceedings out of which the appeal arose, and has power to draw inferences of fact and, in its discretion, to receive further evidence, which may be taken on affidavit, by oral examination before the Court of Appeal or a Judge or otherwise as the Court of Appeal directs.

55 Form of judgment on appeal

- (1) Subject to any law in force in the Territory, the Court of Appeal:
 - (a) may exercise every power, jurisdiction and authority of the Court, whether at law or in equity or under any law in force in the Territory; and
 - (b) shall give such judgment as, in all the circumstances, it thinks fit.
- (2) Without limiting the effect of subsection (1), the Court of Appeal:
 - (a) may affirm, reverse or vary the judgment appealed from, in whole or in part; and
 - (b) may set aside the judgment appealed from, in whole or in part, and substitute its own judgment; and
 - (c) may remit the proceeding for further hearing and determination, subject to the directions the Court of Appeal considers appropriate, to:
 - (i) for an appeal from an Associate Judge or referee – an Associate Judge or referee (as the case may be); or
 - (ii) for an appeal from the Court – the Court consisting of the Judge who gave the judgment; and
 - (d) may set aside a verdict or finding of a jury in a civil proceeding and enter a judgment despite the verdict or finding; and
 - (e) may grant a new trial in any case in which there has been a trial, either with or without a jury, on any ground upon which it is appropriate to grant a new trial; and
 - (f) may award execution from the Court or remit the proceeding to another court for the execution of the judgment of the Court of Appeal.
- (3) It is the duty of a court to which a proceeding is remitted in accordance with subsection (1)(f) to execute the judgment of the Court of Appeal in the same manner as if it were its own judgment.
- (4) The Court of Appeal shall comply with subsection (1) notwithstanding that the notice of appeal asks that part only of the judgment may be reversed or varied, and it may give judgment in favour of all or any of the respondents or parties, including respondents or parties who have not appealed from or complained of the judgment.

- (6) An interlocutory judgment from which there has been no appeal does not operate to prevent the Court of Appeal from giving such decision upon an appeal as it thinks just.
- (7) The powers of the Court of Appeal under subsection (1) in an appeal (whether by the Crown or by the defendant) against a sentence include the power to increase or decrease the sentence or substitute a different sentence.

56 New trial

- (1) In an appeal in which the Court of Appeal grants a new trial, the Court of Appeal may impose such conditions on a party, and may direct such admissions to be made by a party, for the purpose of the new trial as it thinks just.
- (2) Where the Court of Appeal grants a new trial, the Court of Appeal:
 - (a) may grant it, either generally or on particular issues only, as it thinks just; and
 - (b) may at any time order that evidence of a witness examined at the former trial be used in the new trial in the manner provided in the order.

57 Stay of proceedings

- (1) Where an appeal to the Court under section 51(1) has been instituted, the Court of Appeal or the Court may:
 - (a) order, on such conditions, if any, as it thinks fit, a stay of the whole or any part of a proceeding under the judgment appealed from; and
 - (b) by order, on such conditions, if any, as it thinks fit, suspend the operation of a judgment to which the appeal, in whole or in part, relates.
- (2) Subsection (1) does not affect the operation of any provision made by or under any other law in force in the Territory or by the Rules for or in relation to the stay of a proceeding.
- (3) Except as expressly provided by this section or by the Rules or any other law in force in the Territory, the institution of an appeal does not operate as a stay of execution.

58 Senior Judge presides

- (1) At a sitting of the Court of Appeal at which the Chief Justice is present, he shall preside.

- (2) In the absence of the Chief Justice from a sitting of the Court of Appeal, the senior Judge present shall preside, unless the Chief Justice directs otherwise.

59 Majority judgments

- (1) The judgment of the Court of Appeal shall be in accordance with the opinion of the majority of Judges present.
- (2) Where the Judges present at a sitting of the Court of Appeal are equally divided in opinion as to the judgment to be given on any question, the judgment appealed from shall be affirmed.

60 Reserved judgments

When any proceeding, after being fully heard before the Court of Appeal, is ordered to stand for judgment, it shall not be necessary that all the Judges before whom it was heard shall be present together in Court to declare their opinions thereon, but:

- (a) the opinion of any of them may be reduced to writing and may be read or published by any other Judge at any subsequent sitting of the Court of Appeal at which judgment in the proceeding is appointed to be delivered; and
- (b) in any such case the question shall be decided in the same manner, and the judgment of the Court of Appeal shall have the same force and effect, as if the Judge whose opinion is so read or published had been present in Court and declared his opinion in person.

Part IV Concurrent administration of law and equity

61 Law and equity

Subject to the express provisions of any other law in force in the Territory, in every proceeding commenced in the Court, law and equity shall be administered according to the provisions of this Part.

62 Equities of plaintiff

Where a plaintiff claims to be entitled to an equitable estate or right, or to relief on an equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by any defendant in a proceeding, or to relief founded upon a legal right that could in England immediately before the commencement of the Judicature Act only have been given by a Court of Equity, the Court shall give to the plaintiff the same relief as ought then to have been given by the English Court of Chancery in a proceeding for the like purpose.

63 Equities of defendant

Where a defendant claims to be entitled to an equitable estate or right, or to relief on an equitable ground against a deed, instrument or contract, or against a right, title or claim asserted by a plaintiff in a proceeding, or alleges a ground of equitable defence to a claim of the plaintiff, the Court shall give to every equitable estate, right or ground of relief so claimed, and every equitable defence so alleged, the same effect, by way of defence against the claim of the plaintiff, as the English Court of Chancery ought, immediately before the commencement of the Judicature Act, to have given if the like matters had been relied on by way of defence in a proceeding instituted in that Court for the like purpose.

64 Counter claims and third parties

- (1) The Court has power to grant to a defendant, in respect of an equitable estate or right or other matter of equity, and also in respect of a legal estate, right or title claimed or asserted by him:
 - (a) all such relief against a plaintiff as the defendant has properly claimed by his pleading and as the Court might have granted in a proceeding instituted for that purpose by that defendant against the same plaintiff; and
 - (b) all such relief relating to or connected with the original subject of the proceeding, being relief claimed in like manner against another person, whether already a party to the proceeding or not, who has been duly served with notice in writing of the claim pursuant to the Rules, any other law in force in the Territory, or an order of the Court, as might properly have been granted against that person if he had been made a defendant to a proceeding duly instituted by the same defendant for the like purpose.
- (2) A person served with such a notice shall thenceforth be deemed a party to the proceeding with the same rights in respect of his defence against the claim as if he had been duly sued in the ordinary way by the defendant.

65 Equities appearing incidentally

The Court shall take notice of all equitable estates, titles and rights, and of all equitable duties and liabilities appearing incidentally in the course of a proceeding, in the manner in which the English Court of Chancery would, immediately before the commencement of the Judicature Act, have taken notice of those matters in a proceeding properly instituted in that court.

66 Defence or stay instead of injunction or prohibition

(1) Every matter of equity on which an injunction against the prosecution of any such proceeding, if the proceeding had been a proceeding properly instituted in the English Court of Chancery for the like purpose, might, immediately before the commencement of the Judicature Act, have been obtained, whether unconditionally or on any terms or conditions, may be relied on by way of defence.

(2) Notwithstanding subsection (1):

(a) nothing in this Part disables the Court, if it thinks fit so to do, from directing a stay of proceedings in a matter pending before it; and

(b) a person, whether a party or not to a proceeding in the Court, who:

(i) if the proceeding had been a proceeding properly instituted in the English Court of Chancery for the like purpose, would, immediately before the commencement of the Judicature Act, have been entitled to apply to a court to restrain the prosecution of the proceeding; or

(ii) may be entitled to enforce, by attachment or otherwise, a judgment in contravention of which the proceeding, or any part of the proceeding, has been taken,

may apply to the Court, by motion in a summary way, for a stay of proceedings, either generally or so far as is necessary for the purposes of justice, and the Court shall thereupon make such order as it thinks just.

67 Common law and statutory rights

Subject to the provisions of this Part for giving effect to equitable rights and other matters of equity, the Court shall give effect to all legal claims and demands, and to all estates, titles, rights, duties, obligations and liabilities, existing under the law in force in the Territory, including common law and custom.

68 Rules of equity to prevail

In all matters not particularly mentioned in this Part in which there was formerly or is a conflict or variance between the rules of equity and the rules of the common law with reference to the same matter, the rules of equity shall prevail.

69 Injunctions and receivers

- (1) The Court may grant an injunction or appoint a receiver by an interlocutory order in all cases in which it appears to the Court to be just or convenient so to do.
- (2) Such an order may be made either unconditionally or on such terms and conditions as the Court thinks just.
- (3) If, whether before, at or after the hearing of a proceeding, an application is made for an injunction to prevent a threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is or is not in possession under a claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under a colour of title, and whether the estate claimed by any of the parties is legal or equitable.

Part V Practice and procedure**70 Court may issue or transmit court documents electronically**

- (1) Any order, judgment, process or other document that the Court, a Judge, an Associate Judge or a Registrar may issue or transmit under any law of the Territory may be issued or transmitted by electronic communication.
- (2) If any law of the Territory permits or requires any order, judgment, process or other document to be issued or transmitted by manual means, that requirement is taken to be met if the issuing or transmission occurs by electronic communication.

Example for subsection (2)

If an Act requires or permits the Court to sign or seal a document, the Court could use an electronic signature or electronic seal and the requirement is met in the same way as if the document had been signed or sealed by hand.

- (3) This section does not limit or affect:
 - (a) the Court, a Judge, an Associate Judge or a Registrar from issuing or providing any order, judgment, process or other document manually or in paper form; or
 - (b) any practice, procedure or Rules that provide for electronic processes in the Court; or
 - (c) the power to make Rules; or

- (d) any other power of the Court, a Judge, an Associate Judge or a Registrar.

71 Rules of Court

Except as provided by this Act or by any other law in force in the Territory, the practice and procedure of the Court shall be as provided by the Rules.

72 Directions by Chief Justice

Where no provision in relation to a matter of practice and procedure of the Court is contained in this Act, in the Rules or in any other law in force in the Territory, that matter shall be governed as the Chief Justice directs either generally or in relation to a proceeding.

73 Evidence

Subject to this Act, to the Rules and to any other law in force in the Territory, in any proceeding, unless the parties otherwise agree, evidence shall be given orally in open court.

74 Affidavits

- (1) On the hearing of any proceeding, evidence may be given by affidavit of the service of any document incidental to the proceeding or of the signature of a party to the proceeding, or of his solicitor, on such a document.
- (2) In any proceeding, the Court may, for sufficient reason, order that, subject to such conditions as the Court thinks just, all or a part of the evidence in the proceeding, being evidence that, but for the order, would be required to be given orally in open court, may be given by affidavit.
- (3) The conditions referred to in subsection (2):
 - (a) may include a condition that a copy of the affidavit by which any evidence is to be given be served on a party to the proceeding or on any other person; and
 - (b) may include a condition that a person whose evidence is given by affidavit attend at the hearing for cross-examination.

75 Appearance

Subject to any other law in force in the Territory, a party in a proceeding may appear before the Court either personally or by a legal practitioner.

77 Non-appearance or absence of some defendants

- (1) If there are several defendants in a proceeding and if any defendant is not served with process and does not voluntarily appear, the Court may nevertheless entertain the proceeding and hear and determine it between the parties who are properly before the Court, but the judgment given in the proceeding does not conclude the proceeding as against or prejudice other parties who are not served with process and do not voluntarily submit to the jurisdiction of the Court.
- (2) If, in a proceeding, any defendant is not a resident of, or found within, Australia, and does not voluntarily appear in the proceeding, the Court may nevertheless proceed to exercise its jurisdiction after such notice to the defendant and upon such terms as a Judge by order directs or as are prescribed.

80 Amendment of defect in proceedings

The Court may at any time by order, upon such terms as it thinks fit, amend or remedy a defect, error or omission in any proceeding for the purpose of determining the real questions in controversy or otherwise depending on the proceeding.

81 Formal defects

- (1) A proceeding in the Court shall not be invalidated by a formal defect or by an 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 defect or irregularity.

82 Further hearings at another place

When a matter has been heard at a sitting of the Court held at one place, the Court may pronounce judgment or give further hearing or consideration to the matter at a sitting of the Court held at another place.

83 Change of venue

- (1) The Court may, at any stage of a civil proceeding, and subject to such conditions, if any, as the Court imposes, direct that the trial be had or continued at a place specified in the order.

- (2) Where a person is required to appear before the Court, or has appeared before the Court, at a particular place in a criminal proceeding, the Court may, at any time, upon good cause being shown:
 - (a) order that that proceeding be had or continued, or that a person appear for sentence, before the Court at another place; and
 - (b) make such further orders, including orders as to bail and recognizances, as it considers necessary in the circumstances.
- (3) When an application for an order under subsection (2) is made, evidence may be given orally or by affidavit.

83A Mediation

- (1) If the Court considers it appropriate, the Court may direct that a civil proceeding be set down for mediation to explore the possibility of:
 - (a) settling the proceeding; or
 - (b) resolving a particular issue in the proceeding.
- (2) The appointment of a mediator for a civil proceeding, and procedures relating to the mediation, must be in accordance with the Rules.
- (3) The Rules may provide for any of the following to be appointed to be a mediator for a civil proceeding:
 - (a) a Judge;
 - (b) an Associate Judge;
 - (c) a Registrar;
 - (d) a person with suitable qualifications for conducting mediation.
- (4) The Rules may also provide for the appointment of 2 mediators for a civil proceeding, to mediate jointly.
- (5) A mediator appointed for a civil proceeding must not disclose to another person any information obtained during or for the mediation except as required or authorised by law.

- (6) Evidence of anything said or done during mediation for a civil proceeding is not admissible in the proceeding or a court without the consent of the parties except to prove that a settlement was reached and the terms of the settlement.
- (7) This section does not prevent:
- (a) the Court itself from attempting to achieve a negotiated settlement of a civil proceeding or resolution of an issue in a civil proceeding; or
 - (b) the person exercising the power of the Court mentioned in paragraph (a) from taking further part in the proceeding.
- (8) However, if a Judge, an Associate Judge or a Registrar is appointed to be the mediator for a civil proceeding, and has conducted mediation for the proceeding, he or she is disqualified from taking further part in the proceeding.
- (9) A person conducting or participating in mediation for a civil proceeding has the same immunity for an honest act, or an honest and temperate statement or act, done or made during the mediation, as is conferred by the *Courts and Administrative Tribunals (Immunities) Act 2008* on a person conducting or participating in a proceeding.

84 Interest up to judgment

- (1) In any proceeding in respect of a cause of action that arises after the commencement of this Act the Court may order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of that sum for the whole or any part of the period between the date when the cause of action arose and the date of the judgment.
- (1A) Subsection (1) applies subject to Part 4 of the *Personal Injuries (Liabilities and Damages) Act 2003*.
- (2) This section:
- (a) does not authorize the giving of interest upon interest;
 - (b) does not apply in respect of any debt on which interest is payable as of right whether by virtue of an agreement or otherwise; and
 - (c) does not affect damages recoverable for the dishonour of a bill of exchange.

85 Interest on judgments

Except as provided by any law in force in the Territory, a judgment debt carries interest, from the date of the judgment:

- (a) at such rate as is fixed by the Rules; and
- (b) until a rate is so fixed, at 8% per annum.

85A Access to records of Court

- (1) The Court may, on application, grant access to specified records of the Court in relation to proceedings in the Court to a person or class of persons.
- (2) The Court may grant the access under subsection (1) on any terms it considers appropriate.
- (3) Without limiting subsection (1), the Court may grant access:
 - (a) to a person or class of persons representing an Agency who requires access for the purpose of carrying out the functions of the Agency; or
 - (b) to a person who requires access to the records for multiple proceedings in the Court; or
 - (c) to a person who requires regular access to the records for a specified proceeding in the Court.

86 Rules of Court

- (1) The Judges who are not acting or additional Judges, or a majority of those Judges, may make Rules of Court.
- (2) Without limiting subsection (1), Rules of Court may be made:
 - (a) to regulate the practice and procedure to be followed in the Court and in the offices of the Court; and
 - (b) for matters incidental to or relating to any practice and procedure or necessary or convenient for the conduct of any business of the Court in exercising its jurisdiction.
- (3) Rules of Court may be made under subsection (1) in relation to any matter within the jurisdiction of the Court, whether the jurisdiction in relation to the matter is conferred by this Act, another Act, a law of the Commonwealth or otherwise.

(4) Rules of Court may be made under subsection (1) in relation to a matter even if the power to make rules in relation to the matter is conferred by another Act, a law of the Commonwealth or otherwise.

(5) In this section:

Court includes the Court of Criminal Appeal.

87 Regulations

(1) The Administrator may make regulations under this Act.

(2) The regulations may prescribe fees payable under this Act.

Part VI Transitional matters

88 Transitional matters for *Supreme Court Amendment Act 2013*

Any Rules of Court made under section 86 that were in force immediately before the commencement of the *Supreme Court Amendment Act 2013* continue in force as Rules of Court under section 86 as inserted by section 4 of that Act.

89 Transitional matters for *Justice Legislation Amendment (Small Claims and Other Matters) Act 2016*

Section 16, as amended by section 29 of the *Justice Legislation Amendment (Small Claims and Other Matters) Act 2016*, does not apply in relation to a proceeding that was commenced before section 29 of that Act commenced.

90 Transitional matters for *Supreme Court Amendment (Associate Judges) Act 2017*

(1) The person who is the Master of the Court immediately before the commencement day becomes a holder of the office of Associate Judge on the commencement day.

(2) Any service of the person as Master of the Court before the commencement day is taken, on and after the commencement day, to be service as an Associate Judge.

(3) The person:

(a) holds the office of Associate Judge on the same terms and conditions as those on which the person held the office of Master of the Court; and

(b) is not required to take an oath under section 41J.

- (4) A proceeding that was before the Master of the Court immediately before the commencement day:
 - (a) becomes a proceeding before an Associate Judge; and
 - (b) continues uninterrupted and is not affected by the enactment of the *Supreme Court Amendment (Associate Judges) Act 2017*.
- (5) A judgment given, order made or process issued by the Master of the Court before the commencement day has effect, on and after the commencement day, as if it were a judgment given, order made or process issued (as the case requires) by an Associate Judge.
- (6) A reference (in an Act or other document) to the Master of the Court is taken to be a reference to an Associate Judge, unless the context otherwise requires.
- (7) In this section:

commencement day means the day on which section 4 of the *Supreme Court Amendment (Associate Judges) Act 2017* commences.

91 Transitional matters for *Justice Legislation Amendment Act 2019*

If a person who held office as a Judge immediately before the commencement of section 12 of the *Justice Legislation Amendment Act 2019* resigns office on or after the day the person turns 70 years old and before the day the person turns 72 years old, for the purpose of determining the person's pension entitlement under section 4(2) or (3) of the *Supreme Court (Judges Pensions) Act 1980*, the particular age at which the person is to cease to hold office as a Judge is taken to be the exact age of the person on the day the resignation takes effect.

Schedule 1

section 37

I, _____, [*promise/swear etc. as required by Oaths, Affidavits and Declarations Act 2010*] that I will bear true allegiance to [*Sovereign's name*], their Heirs and Successors according to law, that I will well and truly serve them in the Office of Chief Justice [or Judge] of the Supreme Court of the Northern Territory of Australia 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! or as appropriate*]

Schedule 2

section 41J

I, _____, *[promise/swear etc. as required by Oaths, Affidavits and Declarations Act 2010]* that I will bear true allegiance to *[Sovereign's name]*, their Heirs and Successors according to law, that I will well and truly serve them in the office of Associate Judge of the Supreme Court of the Northern Territory of Australia 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! or as appropriate]*

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2**LIST OF LEGISLATION*****Supreme Court Act 1979 (Act No. 109, 1979)***

Assent date	24 September 1979
Commenced	ss 51 – 60: 12 March 1986 (<i>Gaz S8</i> , 12 March 1986); rem: 1 October 1979 (<i>Gaz S18</i> , 28 September 1979, p 1)

Supreme Court Act 1980 (Act No. 28, 1980)

Assent date	14 March 1980
Commenced	23 March 1980 (<i>Gaz G13</i> , 28 March 1980, p 10)

Supreme Court Amendment Act 1984 (Act No. 12, 1984)

Assent date	12 July 1984
Commenced	12 July 1984

Supreme Court Amendment Act 1985 (Act No. 57, 1985)

Assent date	9 December 1985
Commenced	1 March 1986 (<i>Gaz G7</i> , 19 February 1986, p 6)

Supreme Court Amendment Act 1986 (Act No. 19, 1986)

Assent date	30 June 1986
Commenced	30 June 1986

Supreme Court (Rules of Procedure) Act 1987 (Act No. 37, 1987)

Assent date	13 October 1987
Commenced	1 November 1987 (s 2)

Supreme Court Amendment Act 1988 (Act No. 32, 1988)

Assent date	14 September 1988
Commenced	14 September 1988

Supreme Court Amendment Act 1990 (Act No. 9, 1990)

Assent date	2 April 1990
Commenced	2 April 1990

Supreme Court Amendment Act (No. 2) 1990 (Act No. 52, 1990)

Assent date 15 October 1990
 Commenced 1 February 1991 (*Gaz S4*, 30 January 1991)

Statute Law Revision Act 1991 (Act No. 31, 1991)

Assent date 25 June 1991
 Commenced 25 June 1991

Supreme Court Amendment Act 1991 (Act No. 68, 1991)

Assent date 14 November 1991
 Commenced 14 November 1991

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date 30 June 1993
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz S53*, 29 June 1993)

Supreme Court Amendment Act 1993 (Act No. 40, 1993)

Assent date 14 September 1993
 Commenced 6 December 1993 (s 2)

Statute Law Revision Act 1995 (Act No. 14, 1995)

Assent date 23 June 1995
 Commenced 23 June 1995

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
 Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 13 June 1996)

Supreme Court Amendment Act 1996 (Act No. 36, 1996)

Assent date 5 September 1996
 Commenced 1 November 1996 (*Gaz G41*, 9 October 1996, p 4)

Statute Law Revision Act 1999 (Act No. 27, 1999)

Assent date 18 June 1999
 Commenced 18 June 1999

Law of Property (Consequential Amendments) Act 2000 (Act No. 46, 2000)

Assent date 12 September 2000
 Commenced 1 December 2000 (s 2, s 2 *Law of Property Act 2000* (Act No. 1, 2000) and *Gaz G38*, 27 September 2000, p 2)

Personal Injuries (Liabilities and Damages) (Consequential Amendments) Act 2003 (Act No. 4, 2003)

Assent date 18 March 2003
 Commenced 1 May 2003 (*Gaz G17*, 30 April 2003, p 3)

Justice Legislation Amendment Act (No. 2) 2006 (Act No. 35, 2006)

Assent date 3 November 2006
 Commenced 3 November 2006

Legal Profession (Consequential Amendments) Act 2007 (Act No. 7, 2007)

Assent date 17 May 2007
 Commenced s 10: 1 July 2007 (*Gaz* G26, 27 June 2007, p 3);
 rem: 17 May 2007 (s 2)

Financial Management Amendment Act 2009 (Act No. 15, 2009)

Assent date 18 June 2009
 Commenced 18 June 2009

Supreme Court Amendment (Mediation) Act 2010 (Act No. 4, 2010)

Assent date 17 March 2010
 Commenced 14 April 2010 (*Gaz* 15, 14 April 2010, p 4)

Oaths, Affidavits and Declarations (Consequential Amendments) Act 2010 (Act No. 40, 2010)

Assent date 18 November 2010
 Commenced 1 March 2011 (s 2, s 2 *Oaths, Affidavits and Declarations Act 2010* (Act No. 39, 2010) and *Gaz* G7, 16 February 2011, p 4)

Justice Legislation Amendment (Age of Retirement) Act 2013 (Act No. 5, 2013)

Assent date 14 March 2013
 Commenced 2 April 2013 (*Gaz* S14, 2 April 2013)

Supreme Court Amendment Act 2013 (Act No. 10, 2013)

Assent date 3 May 2013
 Commenced 29 May 2013 (*Gaz* G22, 29 May 2013, p 5)

Justice Legislation Amendment (Small Claims and Other Matters) Act 2016 (Act No. 3, 2016)

Assent date 2 March 2016
 Commenced pt 3: nc (Act rep by Act No. 33, 2019, before comm);
 rem: 1 May 2016 (s 2, s 2 *Local Court Act 2015* (Act No. 15, 2015), *Gaz* G1, 6 January 2016, p 9 and *Gaz* G15, 13 April 2016, p 4)

Local Court (Repeals and Related Amendments) Act 2016 (Act No. 9, 2016)

Assent date 6 April 2016
 Commenced 1 May 2016 (*Gaz* S34, 29 April 2016)

Supreme Court Amendment (Associate Judges) Act 2017 (Act No. 18, 2017)

Assent date 5 September 2017
 Commenced 22 November 2017 (*Gaz* S84, 21 November 2017, p 1)

Justice Legislation Amendment Act 2019 (Act No. 1, 2019)

Assent date 22 February 2019
 Commenced 23 February 2019 (s 2)

Statute Law Revision and Repeals Act 2019 (Act No. 33, 2019)

Assent date 6 November 2019
 Commenced pts 2 and 3: 11 December 2019 (*Gaz* G50, 11 December 2019, p 2); rem: 7 November 2019 (s 2)

Courts Legislation Amendment Act 2020 (Act No. 1, 2020)

Assent date 9 March 2020
 Commenced 10 March 2020 (s 2)

Judicial Commission Act 2020 (Act No. 17, 2020)

Assent date 1 July 2020
Commenced 10 November 2021 (*Gaz G45*, 10 November 2021, p 1)

Justice and Other Legislation Amendment Act 2021 (Act No. 7, 2021)

Assent date 13 April 2021
Commenced 17 April 2021 (s 2)

Justice Legislation Amendment (Electronic Documents) Act 2022 (Act No. 2, 2022)

Assent date 1 March 2022
Commenced 2 March 2022 (s 2)

Statute Law Revision Act 2023 (Act No. 4, 2023)

Assent date 2 March 2023
Commenced 3 March 2023

Statute Law Amendment (Succession of the Crown) Act 2023 (Act No. 10, 2023)

Assent date 20 April 2023
Commenced 21 April 2023 (s 2)

Judicial and Other Officers' Entitlements Legislation Amendment Act 2023 (Act No. 14, 2023)

Assent date 31 May 2023
Commenced 1 June 2023 (s 2)

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 3 *Supreme Court Amendment Act 1986* (Act No. 19, 1986)
s 17 *Supreme Court Amendment Act (No. 2) 1990* (Act No. 52, 1990)

4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 16A, 22, 29, 41G, 41H, 50, 83A and 84 and sch 1 and 2.

5 LIST OF AMENDMENTS

s 9 amd No. 37, 1987, s 11; No. 52, 1990, s 4; No. 14, 1995, s 9; No. 17, 1996, s 6; No. 40, 2010, s 111; No. 18, 2017, s 4; No. 14, 2023, s 14
s 9A ins No. 37, 1987, s 12
s 11 amd No. 37, 1987, s 13; No. 18, 2017, s 5
s 11A ins No. 9, 2016, s 148
s 13 amd No. 9, 1990, s 3
s 15 amd No. 37, 1987, s 14; No. 18, 2017, s 6
s 16 rep No. 37, 1987, s 15
ins No. 9, 1990, s 4
amd No. 3, 2016, s 29
s 16A ins No. 3, 2016, s 30
s 21 amd No. 37, 1987, s 16; No. 9, 1990, s 5
s 22 amd No. 9, 1990, s 6
sub No. 7, 2007, s 10

ENDNOTES

s 25	amd No. 19, 1986, s 2; No. 52, 1990, s 5 sub No. 68, 1991, s 2 amd No. 18, 2017, s 7
s 26	amd No. 52, 1990, s 6; No. 18, 2017, s 8
s 27	amd No. 52, 1990, s 7; No. 18, 2017, s 9
s 28	amd No. 18, 2017, s 10
s 29	amd No. 4, 2003, s 6; No. 18, 2017, s 11
s 30	amd No. 18, 2017, s 12; No. 4, 2023, s 23
s 31	rep No. 35, 2006, s 27
s 32	amd No. 36, 1996, s 4; No. 7, 2007, s 11; No. 1, 2019, s 13
s 33	amd No. 18, 2017, s 13
s 37	amd No. 52, 1990, s 8 sub No. 40, 2010, s 112
s 38	amd No. 36, 1996, s 5; No. 1, 2019, s 14; No. 14, 2023, s 15
s 40	amd No. 17, 2020, s 91
s 41	amd No. 27, 1999, s 15; No. 15, 2009, s 16; No. 14, 2023, s 16
pt II	
div 5AA hdg	ins No. 14, 2023, s 17
ss 41AA – 41AE	ins No. 14, 2023, s 17
pt II	
div 5A hdg	ins No. 52, 1990, s 9 amd No. 18, 2017, s 14
s 41A	ins No. 52, 1990, s 9 amd No. 7, 2007, s 12; No. 5, 2013, s 10; No. 18, 2017, s 15; No. 1, 2019, s 15
s 41B	ins No. 52, 1990, s 9 amd No. 18, 2017, s 16
s 41C	ins No. 52, 1990, s 9 amd No. 27, 1999, s 15; No. 15, 2009, s 16; No. 18, 2017, s 17
s 41D	ins No. 52, 1990, s 9 amd No. 5, 2013, s 11; No. 18, 2017, s 18; No. 1, 2019, s 16; No. 7, 2021, s 25
s 41E	ins No. 52, 1990, s 9 amd No. 18, 2017, s 19
s 41F	ins No. 52, 1990, s 9 amd No. 18, 2017, s 20 sub No. 17, 2020, s 92
s 41G	ins No. 52, 1990, s 9 amd No. 28, 1993, s 3; No. 18, 2017, s 21
s 41H	ins No. 52, 1990, s 9 amd No. 28, 1993, s 3; No. 7, 2007, s 13; No. 5, 2013, s 12; No. 18, 2017, s 22; No. 1, 2019, s 17 sub No. 7, 2021, s 26
s 41J	ins No. 52, 1990, s 9 amd No. 40, 2010, s 113; No. 18, 2017, s 23
s 41K	ins No. 52, 1990, s 9 amd No. 18, 2017, s 24
s 43	amd No. 1, 2020, s 13
s 44	amd No. 1, 2020, s 14
s 45	amd No. 1, 2020, s 15
ss 46 – 47	rep No. 52, 1990, s 10
s 48	amd No. 52, 1990, s 11; No. 14, 1995, s 9; No. 7, 2007, s 14
s 49	amd No. 52, 1990, s 12; No. 68, 1991, s 3; No. 18, 2017, s 25
s 49A	ins No. 32, 1988, s 2 amd No. 52, 1990, s 13; No. 18, 2017, s 26
s 50	amd No. 52, 1990, s 14
s 50A	ins No. 57, 1985, s 4

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s 51	amd No. 9, 1990, s 7; No. 35, 2006, s 28
s 52	amd No. 37, 1987, s 17; No. 35, 2006, s 29
s 53	sub No. 35, 2006, s 30 amd No. 18, 2017, s 27
s 55	amd No. 57, 1985, s 5; No. 35, 2006, s 31; No. 18, 2017, s 28
s 69	amd No. 37, 1987, s 18
s 70	rep No. 46, 2000, s 10 ins No. 1, 2020, s 16
s 75	amd No. 7, 2007, s 15
s 76	rep No. 31, 1991, s 14
ss 78 – 79	rep No. 40, 1993, s 3
s 83	amd No. 37, 1987, s 19
s 83A	ins No. 4, 2010, s 4 amd No. 18, 2017, s 29
s 84	amd No. 4, 2003, s 6
s 85A	ins No. 2, 2022, s 40
s 86	amd No. 28, 1980, s 4; No. 57, 1985, s 6 sub No. 10, 2013, s 4
s 87	amd No. 12, 1984, s 2 sub No. 35, 2006, s 32
pt VI hdg	ins No. 14, 2023, s 18
s 88	ins No. 10, 2013, s 5
s 89	ins No. 3, 2016, s 31
s 90	ins No. 18, 2017, s 30
s 91	ins No. 1, 2019, s 18 amd No. 33, 2019, s 49
sch 1	amd No. 52, 1990, s 15; No. 40, 2010, s 114; No. 10, 2023, s 5
sch 2	ins No. 52, 1990, s 16 amd No. 40, 2010, s 115; No. 18, 2017, s 31; No. 10, 2023, s 5