

THE NORTHERN TERRITORY OF AUSTRALIA

SUPREME COURT ACT
No. 109 of 1979
TABLE OF PROVISIONS

Section

PART I - PRELIMINARY

1. Short title
2. Commencement
3. Proceedings in, and appeals to, former Supreme Court
4. Judgments and Rules of former Supreme Court
5. Records of former Supreme Court
6. References to former Supreme Court, &c.
7. Judges of former Supreme Court
8. Officers of former Supreme Court
9. Interpretation

PART II - CONSTITUTION AND JURISDICTION
OF THE SUPREME COURT

Division 1 - Constitution

10. Establishment
11. Constitution
12. Superior court of record
13. Principal seat, &c.

Division 2 - Jurisdiction

14. Jurisdiction
15. Exercise of jurisdiction
16. Chambers
17. Open Court
18. Declaration of right
19. Determination of matter completely and finally
20. Orders and writs

Division 3 - Full Court

21. Full Court
22. Legal practitioners
23. Majority judgments
24. Reserved judgments

Supreme Court

Division 4 - Exercise of Jurisdiction by Master and Referees

- 25. Jurisdiction by Master
- 26. Reference for report
- 27. Reference for trial
- 28. Powers
- 29. Powers of Master
- 30. Effect of judgment
- 31. Appeal

Division 5 - Judges

- 32. Appointment of Judges
- 33. Seniority
- 34. Chief Justice
- 35. Acting Chief Justice
- 36. Offices of profit
- 37. Oath of office
- 38. Retirement
- 39. Resignation
- 40. Removal from office
- 41. Remuneration

Division 6 - Registries, Seals and Officers

- 42. Registry
- 43. Seal
- 44. Stamps
- 45. Judicial notice of Seal
- 46. Appointment of Master
- 47. Powers of Master
- 48. Appointment of Deputy Masters
- 49. Powers of Deputy Masters
- 50. Other officers

PART III - COURT OF APPEAL

- 51. Right of appeal
- 52. Exercise of appellate jurisdiction
- 53. Appeal from interlocutory judgment
- 54. Evidence on appeal
- 55. Form of judgment on appeal
- 56. New trial
- 57. Stay of proceedings
- 58. Senior Judge presides
- 59. Majority judgments
- 60. Reserved judgments

Supreme Court

PART IV - CONCURRENT ADMINISTRATION
OF LAW AND EQUITY

61. Law and equity
62. Equities of plaintiff
63. Equities of defendant
64. Counter claims and third parties
65. Equities appearing incidentally
66. Defence or stay instead of injunction or prohibition
67. Common law and statutory rights
68. Rules of equity to prevail
69. Mandamus, injunctions and receivers
70. Assignment of chose in action

PART VI - PRACTICE AND PROCEDURE

71. Rules of Court
72. Directions by Chief Justice
73. Evidence
74. Affidavits
75. Appearance
76. Orders and commissions for examination of witnesses
77. Non-appearance or absence of some defendants
78. Intervention of Attorney-General
79. Notice to Attorney-General
80. Amendment of defect in proceedings
81. Formal defects
82. Further hearings at another place
83. Change of venue
84. Interest up to judgment
85. Interest on judgments
86. Rules of Court
87. Regulations

SCHEDULE

THE NORTHERN TERRITORY OF AUSTRALIA

No. 109 of 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

[Assented to 24 September 1979]

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

Short title

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

Commencement

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

Proceedings in, and appeals to, former Supreme Court

- (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.

Supreme Court

Judgments
and Rules
of former
Supreme
Court

4.(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.

Records of
former
Supreme
Court

5. 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.

References
to former
Supreme
Court, &c.

6.(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.

Judges of
former

7.(1) Upon the commencement of this Act, the person who, immediately before the commencement of

Supreme Court

this Act, held office as the Chief Judge of the former Supreme Court - 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 sub-section, 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.(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.

Officers of
former
Supreme
Court

(2) A person who continues in an office by virtue of sub-section (1) shall not be required to take an oath upon the commencement of this Act.

9. In this Act, unless the contrary intention appears -

Interpretation

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

Supreme Court

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

"affidavit" includes, in relation to a person who conscientiously objects to taking an oath, a solemn affirmation or declaration in writing;

"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;

"Deputy Master" means a Deputy Master appointed under this Act;

"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, 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;

"Master" means the Master of the Court;

Supreme Court

"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 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;

"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;

"Seal" means the Seal of the Court;

"Sheriff" means the Sheriff of the Territory.

PART II - CONSTITUTION AND JURISDICTION OF THE COURT

Division 1 - Constitution

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

11.(1) The Court consists of the Judges. Constitution

(2) The Court shall be constituted by a Judge or Judges sitting and exercising the jurisdiction of the Court.

(3) The Court constituted by a Judge or Judges may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by another Judge or other Judges is at the same time sitting and exercising the jurisdiction of the Court.

Supreme Court

Superior
court of
record

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

Principal
seat, &c.

13.(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.

(3) The jurisdiction of the Court exercisable in Chambers may be so exercised at any place and at any time.

Division 2 - Jurisdiction

Jurisdiction 14.(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

Supreme Court

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 sub-section (1) is in addition to the jurisdiction that the Court has under any Imperial Act.

15. The jurisdiction of the Court, other than its appellate jurisdiction, is exercisable -

Exercise of
jurisdiction

- (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 sitting in Court;
- (c) as provided by section 16, by a Judge sitting in Chambers; or
- (d) as provided by Division 4, by the Master or a referee.

16.(1) The jurisdiction of the Court, other than its appellate jurisdiction, may be exercised by a Judge sitting in Chambers -

Chambers

- (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.

(2) A Judge may order a proceeding in Chambers to be adjourned into Court and heard in open court.

17. 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.

Open Court

Supreme Court

Declaration of right 18.(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.

Determination of matter completely and finally 19. 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.

Orders and writs 20. 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

Full Court 21.(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, subject to section 16(1)(b);

(b) decline to accept; or

(c) accept in part only, and then subject to section 16(1)(b),

a reference make under sub-section (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.

Legal practitioners 22. The jurisdiction, other than the appellate jurisdiction, of the Court in any matter relating to the professional behaviour or conduct of a legal practitioner, being a matter arising under an Act

Supreme Court

relating to legal practitioners, shall, subject to section 16, be exercised by the Full Court.

23. 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 - Majority judgments

- (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. 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 - Reserved judgments

- (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.(1) The Rules may -

Jurisdiction by Master

- (a) empower the Master to exercise the jurisdiction of the Court in interlocutory proceedings; and
- (b) prescribe the circumstances in which, and the terms and conditions subject to which, the Master may exercise that jurisdiction.

(2) The jurisdiction of the Court shall not be exercised by a Deputy Master.

26.(1) Subject to the Rules, and to any right to have particular cases tried by a jury, the Court may by order refer to the Master or to a referee for inquiry and report any question arising in any civil proceeding. Reference for report

Supreme Court

(2) The expression "the Master" in sub-section (1) does not include a Deputy Master.

(3) Where a question is referred to the Master or a referee under sub-section (1), the report of the Master 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.

Reference
for trial

27.(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 the Master 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 the Master.

(3) The expression "the Master" in this section does not include a Deputy Master.

Powers

28. 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) in may, subject to the Rules, give such directions as it thinks fit;
- (c) the Master or referee, as the case may be, may exercise the jurisdiction of the Court for the purpose of carrying out the order; and

Supreme Court

- (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. Where the Master 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 -

Powers of
Master

- (a) he has and may exercise the authority, powers, functions, duties, privileges and immunities of the Court and of a Judge (but not including the power to commit for contempt);
- (b) he 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) he may, if he gives a judgment -
- (i) order the inclusion of interest in any sum for which judgment is given; and
- (ii) make an order as to costs.

30. A judgment given by the Master or a referee in the exercise of the jurisdiction of the Court has effect, subject to section 31 and to the Rules, as a judgment of the Court.

Effect of
judgment

31.(1) A party to a proceeding affected by a judgment given in that proceeding by the Master or a referee in the exercise of the jurisdiction of the Court may appeal from that judgment to the Court.

Appeal

(2) On an appeal under sub-section (1), the Court may -

- (a) affirm, vary or reverse the judgment appealed from, in whole or in part, and give such judgment as in all the circumstances it thinks just; or
- (b) set aside the judgment appealed from, in whole or in part, and substitute its own judgment or remit the proceeding to the Master or referee, as the case may be, for further hearing and determination subject to such directions as the Court thinks fit.

Supreme Court

Division 5 - Judges

Appointment of Judges 32.(1) The Administrator may, by commission, appoint a person who has not attained the age of 70 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) has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory of the Commonwealth for not less than 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 has not attained the age of 70 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) has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory of the Commonwealth for not less than 10 years

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

(3) While a person appointed under sub-section (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.

Seniority 33.(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

Supreme Court

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.

34. 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.

Chief
Justice

35. Whenever -

Acting Chief
Justice

(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.(1) A Judge shall not, without the approval of the Attorney-General -

Offices of
profit

(a) accept another judicial commission; or

(b) accept an office of profit under the Crown.

(2) Nothing in sub-section (1) shall affect a judicial commission given before the commencement of this Act.

37. A Judge shall, before proceeding to discharge the duties of his office, 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.

Oath of
office

Supreme Court

Retirement 38. A Judge ceases to hold office upon his attaining the age of 70 years.

Resignation 39. 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.

Removal from office 40.(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.

Remuneration 41.(1) A Judge shall receive -

- (a) salary at a rate;
- (b) such allowances and at such rates; and
- (c) such other benefits

as are determined from time to time by the Administrator.

(2) Salary to which a Judge is entitled under sub-section (1) accrues from day to day and is payable monthly.

(3) The salary, allowances and other benefits to which a Judge is entitled under sub-section (1) shall not be altered to his detriment during his term of office.

(4) The Consolidated Fund is appropriated to the extent necessary for the payment of salaries, allowances and benefits payable under sub-section (1).

Division 6 - Registries, Seals and Officers

Registry 42.(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.

Seal 43.(1) The Court shall have a Seal for sealing writs and other documents issued out of the Court and required to be sealed.

Supreme Court

(2) The Seal shall be of a design approved by the Chief Justice and shall be inscribed with the words "The Seal of the Supreme Court of the Northern Territory of Australia".

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

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

Stamps

(2) A stamp referred to in sub-section (1) shall 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 sub-section (1) is as valid and effectual as if it had been sealed with the Seal.

45. All Courts and all persons acting judicially shall take judicial notice of the Seal affixed to, and of the mark of a stamp referred to in section 44(1) impressed on a document or a copy of a document and shall presume that it was affixed or impressed by proper authority.

Judicial
notice of
Seal

46. The Attorney-General, on the recommendation of the Chief Justice, may appoint a person who is admitted or qualified to be admitted as a legal practitioner of the Court to be the Master of the Court.

Appointment
of Master

47.(1) The Master has power to administer oaths, and shall perform such duties in respect of a proceeding as are assigned to him by a law in force in the Territory, by the Rules or by order of the Court.

Powers of
Master

(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 the Master.

(3) The Master is a Justice of the Peace for the Territory.

48. The Attorney-General may appoint a person who is admitted or qualified to be admitted as a legal practitioner of the Court to be a Deputy Master of the Court.

Appointment
of Deputy
Masters

49.(1) Subject to this Act and to the directions of the Master, a Deputy Master has, and may exercise

Powers of
Deputy Masters

Supreme Court

and perform, all the powers and functions of the Master under any law in force in the Territory.

(2) The appointment of a person to be a Deputy Master does not affect the exercise or performance of a power or function by the Master.

Other
officers

50. The Attorney-General may appoint such officers of the Court, in addition to the Master and Deputy Masters and to the officers appointed under the Sheriff Act, as he considers necessary.

PART III - COURT OF APPEAL

Right of
appeal

51.(1) Where the jurisdiction of the Court in a proceeding or a part of a proceeding was exercised otherwise than by the Master or a referee, 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 sub-section (1), may be known as the Court of Appeal of the Northern Territory of Australia.

Exercise of
appellate
jurisdiction

52.(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, subject to section 53, be exercised by a Judge sitting in Court or in Chambers -

- (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.

Supreme Court

(4) A Judge may order a proceeding in Chambers to be adjourned into Court and heard in open court.

(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. A party to a proceeding may not appeal under section 51(1) from an interlocutory judgment except by leave of the Court of Appeal constituted by not less than 3 Judges.

Appeal from
interlocutory
judgment

54. 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.

Evidence on
appeal

55.(1) Subject to any law in force in the Territory, the Court of Appeal -

Form of
judgment on
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 sub-section (1), the Court of Appeal -

(a) may affirm, reverse or vary the judgment appealed from, in whole or in part;

(b) may set aside the judgment appealed from, in whole or in part, and substitute its own judgment or remit the proceeding to the Court constituted by the Judge who gave that judgment for further hearing and determination, subject to such directions as the Court of Appeal thinks fit;

(c) may set aside a verdict or finding of a jury in a civil proceeding, and enter a judgment notwithstanding any such verdict or finding;

(d) may set aside the verdict and judgment in a trial on indictment and order a verdict of not

Supreme Court

guilty or other appropriate verdict to be entered;

(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 sub-section (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 sub-section (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.

(5) In a criminal proceeding the Court of Appeal may, notwithstanding that it is of the opinion that the question or questions raised by the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(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 sub-section (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.

(8) No appeal shall lie to the Court from an acquittal by a jury in a proceeding.

New trial

56.(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.

Supreme Court

(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.(1) Where an appeal to the Court under section 51(1) has been instituted, the Court of Appeal or the Court may -

Stay of proceedings

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

Senior Judge presides

(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.(1) The judgment of the Court of Appeal shall be in accordance with the opinion of the majority of Judges present.

Majority judgments

(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. When any proceeding, after being fully heard before the Court of Appeal, is ordered to stand for

Reserved judgments

Supreme Court

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

Law and
equity

61. 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.

Equities of
plaintiff

62. 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.

Equities of
defendant

63. 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.

Supreme Court

64.(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 -

Counter claims
and third
parties

- (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. 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.

Equities
appearing
incidentally

66.(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.

Defence or
stay instead
of injunction
or prohibition

(2) Notwithstanding sub-section (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

Supreme Court

(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.

Common law
and statut-
ory rights

67. 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.

Rules of
equity to
prevail

68. 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.

Mandamus,
injunctions
and
receivers

69.(1) The Court may grant a mandamus or 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

Supreme Court

estate claimed by any of the parties is legal or equitable.

70.(1) Any absolute assignment, whether made before or after the commencement of this Act, by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of that notice -

Assignment
of chose in
action

- (a) the legal right to that debt or thing in action;
- (b) all legal and other remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor.

(2) If the debtor, trustee or other person liable in respect of such a debt or thing in action has notice -

- (a) that the assignment is disputed by the assignor or any person claiming under him; or
- (b) of any other opposing or conflicting claims to that debt or thing in action,

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under and in conformity with the provisions of the law relating to relief of trustees.

PART V - PRACTICE AND PROCEDURE

71. 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.

Rules of
Court

72. 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.

Directions by
Chief Justice

73. Subject to this Act, to the Rules and to any other law in force in the Territory, in any proceeding,

Evidence

Supreme Court

unless the parties otherwise agree, evidence shall be given orally in open court.

Affidavits

74.(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 sub-section (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.

Appearance

75. 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 having the right to practise in the Court.

Orders and commissions for examination of witnesses

76. The Court may, in a civil proceeding -

(a) order the examination of a person upon oath, orally or on interrogatories, before the Court or before an officer of the Court or other person, at any place within Australia;

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

(c) by the same or a subsequent order, give any necessary directions touching the time, place and manner of the examination or taking of evidence; and

(d) empower a party to the proceeding to give in evidence in the proceeding the evidence taken pursuant to an order under this section on such terms, if any, as the Court directs.

Supreme Court

77.(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.

Non-appearance
or absence of
some defendants

(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.

78.(1) The Attorney-General may intervene in a proceeding before the Court, being a proceeding that relates to a matter arising under, or involving the interpretation of, a law of the Commonwealth or of the Territory where the Attorney-General is of the opinion that it is in the public interest to do so.

Intervention
of Attorney-
General

(2) Where the Attorney-General intervenes in a proceeding under this section, the Court may make such order as to costs, including an order against the Territory, as the Court thinks fit.

79.(1) Where a proceeding relates to a matter arising under, or involving the interpretation of, a law of the Commonwealth or of the Territory, the Court may, upon the application of any party or of the Attorney-General or of its own motion, adjourn the proceeding and may direct a party to give notice of the proceeding to the Attorney-General.

Notice to
Attorney-
General

(2) If the Court grants an adjournment under sub-section (1), the Court may make such order as to costs in relation to such an adjournment, including an order against the Territory, as the Court thinks fit.

80. 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.

Amendment of
defect in
proceedings

81.(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.

Formal
defects

Supreme Court

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

Further
hearings at
another
place

82. 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.

Change of
venue

83.(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 to a Judge in Chambers, evidence may be given orally or by affidavit.

Interest
up to
judgment

84.(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.

(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.

Supreme Court

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

Interest on judgments

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

86.(1) The Judges who are appointed under section 32(1) and are not additional Judges, or a majority of those Judges, may make Rules of Court, not inconsistent with this Act -

Rules of Court

- (a) for regulating and prescribing -

(i) the practice and procedure, including the method of pleading, to be followed in the Court and in the offices of the Court; and

(ii) all matters and things incidental to or relating to any such practice and procedure or necessary or convenient to be prescribed for the conduct of any business of the Court; and

- (b) for prescribing any matter or thing that is, by this Act, required or permitted to be prescribed by Rules of Court.

(2) In particular, and without limiting the generality of sub-section (1), the Rules may make provision for or in relation to -

- (a) the service and execution of the process of the Court, including the service and execution of process out of the jurisdiction of the court;
- (b) the service and execution in the Territory of the process of any foreign court;
- (c) costs; and
- (d) evidence, including the administration of oaths, the attendance of witnesses and the production of documents.

87.(1) The Administrator may make regulations prescribing the fees to be paid in respect of a proceeding in the Court or the service or execution of the process of the Court by officers of the Court.

Regulations

(2) This section does not prevent the making of rules or regulations under another Act or law in force in the Territory with respect to a matter referred to

Supreme Court

in this section, or affect the operation of any such rules or regulations so far as they are not inconsistent with regulations under this section.

Supreme Court

SCHEDULE

Section 37

I, _____, do swear that I will bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her 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!

I, _____, do solemnly and sincerely promise, affirm and declare that I will bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her 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.
