# Judiciary Act 1903

**Act No. 6 of 1903 as amended**

This compilation was prepared on 4 May 2011
taking into account amendments up to Act No. 5 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,
Attorney-General's Department, Canberra

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# An Act to make provision for the Exercise of the Judicial Power of the Commonwealth

# Part I—Preliminary

## 1 Short title [*see* Note 1]

This Act may be cited as the *Judiciary Act 1903*.

## 2 Interpretation

In this Act, unless the contrary intention appears:

***AGS*** means the Australian Government Solicitor established under Division 2 of Part VIIIB.

***Appeal*** includes an application for a new trial and any proceeding to review or call in question the proceedings decision or jurisdiction of any Court or Judge.

***Cause*** includes any suit, and also includes criminal proceedings.

***Chief Justice*** includes a Justice for the time being performing the duties and exercising the powers of the Chief Justice.

***Defendant*** includes any person against whom any relief is sought in a matter or who is required to attend the proceedings in a matter as a party thereto.

***examination and commitment for trial on indictment*** includes commitment for trial on indictment.

***Judgment*** includes any judgment decree order or sentence.

***Justice*** means a Justice of the High Court and includes the Chief Justice.

***legal practitioner*** means a person entitled, under an Act or a law of a State or Territory, to practise as one of the following:

(a) a legal practitioner;

(b) a barrister;

(c) a solicitor;



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(d) a barrister and solicitor.

***Matter*** includes any proceeding in a Court, whether between parties or not, and also any incidental proceeding in a cause or matter.

***Plaintiff*** includes any person seeking any relief against any other person by any form of proceeding in a Court.

***Suit*** includes any action or original proceeding between parties.

## 3A Extension to Territories

This Act extends to all the Territories.

# Part III—Jurisdiction and powers of the High Court generally

## Division 1—Exercise of jurisdiction

### 15 Exercise of jurisdiction

The jurisdiction of the High Court may, subject to the provisions of this Act, be exercised by any one or more Justices sitting in open Court.



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## Division 2—Jurisdiction of single Justice

### 16 Jurisdiction in Chambers

The jurisdiction of the High Court may be exercised by a Justice sitting in Chambers in the cases following:

(a) Applications relating to the conduct of a cause or matter;

(b) Applications relating to the custody management or preservation of property, or to the sale of property and the disposition of the purchase money;

(c) Applications for orders or directions as to any matter which by this Act or by Rules of Court is made subject to the direction of a Justice sitting in Chambers;

(d) Any other applications which by this or any Act or by Rules of Court are authorized to be made to a Justice sitting in Chambers.

But on the application of either party the Justice may order the application to be adjourned into Court and heard in open Court.

### 17 State Supreme Courts invested with jurisdiction in Chambers

(1) In any matter pending in the High Court, not being a matter in which the High Court has exclusive jurisdiction, the Supreme Court of a State shall be invested with federal jurisdiction to hear and determine any applications which may be made to a Justice of the High Court sitting in Chambers.

(2) Such jurisdiction may be exercised by a single Judge of the Supreme Court sitting in Chambers, and the order of the Judge shall have the effect of an order of a Justice of the High Court sitting in Chambers.

### 18 Reference to Full Court

Any Justice of the High Court sitting alone, whether in Court or in Chambers, may state any case or reserve any question for the consideration of a Full Court, or may direct any case or question to be argued before a Full Court, and a Full Court shall thereupon have power to hear and determine the case or question.



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## Division 3—Full Court

### 19 Quorum of a Full Court

Except as hereinafter provided, a Full Court may be constituted by any two or more Justices of the High Court sitting together.

### 20 Appeals from Judges of federal jurisdiction

The jurisdiction of the High Court to hear and determine appeals from judgments:

(a) of a Justice of the High Court exercising the original jurisdiction of the High Court; or

(b) of the Supreme Court of a State exercising federal jurisdiction when such jurisdiction is exercised by a single Judge; or

(c) of any other court exercising federal jurisdiction; or

(d) of the Inter-State Commission;

and to hear and determine applications for a new trial of any cause or matter, after a trial before any such Justice or any such Court exercising federal jurisdiction, shall be exercised by a Full Court.

### 21 Applications for special leave to appeal to High Court

(1) Applications for special leave to appeal to the High Court from a judgment of another court may be heard and determined by a single Justice or by a Full Court and the Rules of Court may provide for enabling such applications to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

*Quorum of Justices on appeals from State Supreme Courts*

(2) The jurisdiction of the High Court to hear and determine appeals from judgments of the Supreme Court of a State sitting as a Full Court, shall be exercised by a Full Court consisting of not less than three Justices.

(3) The reference in subsection (2) to the Supreme Court of a State sitting as a Full Court shall be read as a reference to the Supreme Court of a State when constituted by 2 or more Judges, and

includes the Supreme Court of a State when so constituted for the purpose of sitting as the Court of Appeal of the State.

## 22 Quorum for granting leave to appeal to the Queen in Council or to High Court

Applications to the High Court for a certificate that a question as to the limits *inter se* of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits *inter se* of the Constitutional powers of any two or more States, which has been decided by the High Court, is one which ought to be determined by the Queen in Council, shall be heard and determined by a Full Court consisting of not less than three Justices.

## 23 Decision in case of difference of opinion

(1) A Full Court consisting of less than all the Justices shall not give a decision on a question affecting the constitutional powers of the Commonwealth, unless at least three Justices concur in the decision.

(2) Subject to the last preceding subsection, when the Justices sitting as a Full Court are divided in opinion as to the decision to be given on any question, the question shall be decided according to the decision of the majority, if there is a majority; but if the Court is equally divided in opinion:

(a) in the case where a decision of a Justice of the High Court (whether acting as a Justice of the High Court or in some other capacity), a decision of a Supreme Court of a State or Territory or a Judge of such a Court, a decision of the Federal Court of Australia or a Judge of that Court or a decision of the Family Court of Australia or a Judge of that Court is called in question by appeal or otherwise, the decision appealed from shall be affirmed; and

(b) in any other case, the opinion of the Chief Justice, or if he or she is absent the opinion of the Senior Justice present, shall prevail.



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## Division 4—Enforcement of process

### 24 Contempt

The High Court shall have the same power to punish contempts of its power and authority as is possessed at the commencement of this Act by the Supreme Court of Judicature in England.

### 25 Powers of court to extend to whole Commonwealth

The process of the High Court shall run, and the judgments and orders of the High Court shall have effect and may be executed, throughout the Commonwealth.



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## Division 4A—Summary judgment

### 25A Summary judgment

(1) The High Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:

(a) the first party is prosecuting the proceeding or that part of the proceeding; and

(b) the Court is satisfied that the other party has no reasonable prospect of successfully defending the proceeding or that part of the proceeding.

(2) The High Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:

(a) the first party is defending the proceeding or that part of the proceeding; and

(b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.

(3) For the purposes of this section, a defence or a proceeding or part of a proceeding need not be:

(a) hopeless; or

(b) bound to fail;

for it to have no reasonable prospect of success.

(4) This section does not limit any powers that the High Court has apart from this section.



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## Division 5—Costs

### 26 Costs

The High Court and every Justice thereof sitting in Chambers shall have jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.

### 27 No appeal as to costs

An appeal shall not lie to the High Court from a decision of a Justice of the Court, or from a decision of the Supreme Court of a State exercising federal jurisdiction, with respect to costs which are in the discretion of the Court, except by leave of the Justice or Court.



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## Division 6—Defendants

### 28 Non-appearance of some defendants

When there are several defendants in any cause pending in the High Court, if any defendant is not served with process and does not voluntarily appear, the Court may nevertheless entertain the cause and proceed to hear and determine it between the parties who are properly before the Court; but the judgment given in the cause shall not conclude or prejudice other parties who are not regularly served with process and do not voluntarily submit to the jurisdiction of the Court.

### 29 Absent defendants

When, in any suit of which the High Court has original jurisdiction, any defendant is not a resident of or found within the Commonwealth, and does not voluntarily appear in the suit, the Court may nevertheless proceed to exercise its jurisdiction after such notice to the defendant and upon such terms as are prescribed by Rules of Court.



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# Part IV—Original jurisdiction of the High Court

## 30 Original jurisdiction conferred

In addition to the matters in which original jurisdiction is conferred on the High Court by the Constitution, the High Court shall have original jurisdiction:

(a) in all matters arising under the Constitution or involving its interpretation; and

(c) in trials of indictable offences against the laws of the Commonwealth.

## 31 Judgment and execution

The High Court in the exercise of its original jurisdiction may make and pronounce all such judgments as are necessary for doing complete justice in any cause or matter pending before it, and may for the execution of any such judgment in any part of the Commonwealth direct the issue of such process, whether in use in the Commonwealth before the commencement of this Act or not, as is permitted or prescribed by this or any Act or by Rules of Court.

## 32 Complete relief to be granted

The High Court in the exercise of its original jurisdiction in any cause or matter pending before it, whether originated in the High Court or removed into it from another Court, shall have power to grant, and shall grant, either absolutely or on such terms and conditions as are just, all such remedies whatsoever as any of the parties thereto are entitled to in respect of any legal or equitable claim properly brought forward by them respectively in the cause or matter; so that as far as possible all matters in controversy between the parties regarding the cause of action, or arising out of or connected with the cause of action, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters may be avoided.

## 33 Mandamus Prohibition Ouster of office

(1) The High Court may make orders or direct the issue of writs:

(a) commanding the performance by any court invested with federal jurisdiction, of any duty relating to the exercise of its federal jurisdiction; or

(b) requiring any court to abstain from the exercise of any federal jurisdiction which it does not possess; or

(c) commanding the performance of any duty by any person holding office under the Commonwealth; or

(d) removing from office any person wrongfully claiming to hold any office under the Commonwealth; or

(e) of mandamus; or

(f) of *habeas corpus*.

(2) This section shall not be taken to limit by implication the power of the High Court to make any order or direct the issue of any writ.

## 33A Awards may be made Rules of Court

The High Court may by order direct that an award in an arbitration in respect of any matter over which the High Court has original jurisdiction, or in respect of which original jurisdiction may be conferred upon the High Court, shall be a Rule of the High Court.



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# Part V—Appellate jurisdiction of the High Court

## Division 1—Appeals

### 34 Appeals from Justices of High Court

(1) The High Court shall, except as provided by this Act, have jurisdiction to hear and determine appeals from all judgments whatsoever of any Justice or Justices, exercising the original jurisdiction of the High Court whether in Court or Chambers.

(2) An appeal shall not be brought without the leave of the High Court from an interlocutory judgment of a Justice or Justices exercising the original jurisdiction of the High Court whether in Court or Chambers.

### 35 Appeal from courts of States

(1) The jurisdiction of the High Court to hear and determine appeals from:

(a) judgments of the Supreme Court of a State, whether given or pronounced in the exercise of federal jurisdiction or otherwise; or

(b) judgments of any other court of a State given or pronounced in the exercise of federal jurisdiction;

whether in civil or criminal matters, is subject to the exceptions and regulations prescribed by this section.

(2) An appeal shall not be brought from a judgment, whether final or interlocutory, referred to in subsection (1) unless the High Court gives special leave to appeal.

(5) The foregoing provisions of this section have effect subject to any special provision made by an Act other than this Act, whether passed before or after the commencement of this section, preventing or permitting appeals from the Supreme Courts of the States in particular matters.



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## 35AA Appeals from Supreme Court of a Territory

(1) Subject to subsections (2) and (3), the High Court has jurisdiction to hear and determine appeals from judgments of the Supreme Court of a Territory.

(2) An appeal shall not be brought from a judgment, whether final or interlocutory, referred to in subsection (1) unless the High Court gives special leave to appeal.

(2A) An appeal may not be brought to the High Court from a judgment of the Supreme Court of the Australian Capital Territory given after the commencement of this subsection when that Court is known as the Court of Disputed Elections under subsection 252(1) of the *Electoral Act 1992* of that Territory.

(3) Subsection (1) has effect subject to any special provision made by an Act other than this Act, whether passed before or after the commencement of this section, preventing or permitting appeals from the Supreme Court of a Territory.

## 35A Criteria for granting special leave to appeal

In considering whether to grant an application for special leave to appeal to the High Court under this Act or under any other Act, the High Court may have regard to any matters that it considers relevant but shall have regard to:

(a) whether the proceedings in which the judgment to which the application relates was pronounced involve a question of law:

(i) that is of public importance, whether because of its general application or otherwise; or

(ii) in respect of which a decision of the High Court, as the final appellate court, is required to resolve differences of opinion between different courts, or within the one court, as to the state of the law; and

(b) whether the interests of the administration of justice, either generally or in the particular case, require consideration by the High Court of the judgment to which the application relates.



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## Division 2—Power of Court

### 36 New Trials

The High Court in the exercise of its appellate jurisdiction shall have power to grant a new trial in any cause in which there has been a trial whether with or without a jury.

### 37 Form of judgment on appeal

The High Court in the exercise of its appellate jurisdiction may affirm reverse or modify the judgment appealed from, and may give such judgment as ought to have been given in the first instance, and if the cause is not pending in the High Court may in its discretion award execution from the High Court or remit the cause to the Court from which the appeal was brought for the execution of the judgment of the High Court; and in the latter case it shall be the duty of that Court to execute the judgment of the High Court in the same manner as if it were its own judgment.



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# Part VI—Exclusive and invested jurisdiction

## 38 Matters in which jurisdiction of High Court exclusive

Subject to sections 39B and 44, the jurisdiction of the High Court shall be exclusive of the jurisdiction of the several Courts of the States in the following matters:

(a) matters arising directly under any treaty;

(b) suits between States, or between persons suing or being sued on behalf of different States, or between a State and a person suing or being sued on behalf of another State;

(c) suits by the Commonwealth, or any person suing on behalf of the Commonwealth, against a State, or any person being sued on behalf of a State;

(d) suits by a State, or any person suing on behalf of a State, against the Commonwealth or any person being sued on behalf of the Commonwealth;

(e) matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a federal court.

Note: Under the *Jurisdiction of Courts (Cross-vesting) Act 1987*, State Supreme Courts are, with some exceptions and limitations, invested with the same civil jurisdiction as the Federal Court has, including jurisdiction under section 39B of this Act.

## 39 Federal jurisdiction of State Courts in other matters

(1) The jurisdiction of the High Court, so far as it is not exclusive of the jurisdiction of any Court of a State by virtue of section 38, shall be exclusive of the jurisdiction of the several Courts of the States, except as provided in this section.

(2) The several Courts of the States shall within the limits of their several jurisdictions, whether such limits are as to locality, subject-matter, or otherwise, be invested with federal jurisdiction, in all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except as provided in section 38, and subject to the following conditions and restrictions:

(a) A decision of a Court of a State, whether in original or in appellate jurisdiction, shall not be subject to appeal to Her Majesty in Council, whether by special leave or otherwise.

*Special leave to appeal from decisions of State Courts though State law prohibits appeal*

(c) The High Court may grant special leave to appeal to the High Court from any decision of any Court or Judge of a State notwithstanding that the law of the State may prohibit any appeal from such Court or Judge.

## 39A Federal jurisdiction invested in State Courts by other provisions

(1) The federal jurisdiction with which a Court of a State is invested by or under any Act, whether the investing occurred or occurs before or after the commencement of this section, including federal jurisdiction invested by a provision of this Act other than the last preceding section:

(a) shall be taken to be invested subject to the provisions of paragraph (a) of subsection (2) of the last preceding section; and

(b) shall be taken to be invested subject to paragraph 39(2)(c) (whether or not the jurisdiction is expressed to be invested subject to that paragraph), so far as it can apply and is not inconsistent with a provision made by or under the Act by or under which the jurisdiction is invested;

in addition to any other conditions or restrictions subject to which the jurisdiction is expressed to be invested.

(2) Nothing in this section or the last preceding section, or in any Act passed before the commencement of this section, shall be taken to prejudice the application of any of sections 72 to 77 (inclusive) in relation to jurisdiction in respect of indictable offences.

## 39B Original jurisdiction of Federal Court of Australia

*Scope of original jurisdiction*

(1) Subject to subsections (1B), (1C) and (1EA), the original jurisdiction of the Federal Court of Australia includes jurisdiction with respect to any matter in which a writ of mandamus or



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prohibition or an injunction is sought against an officer or officers of the Commonwealth.

(1A) The original jurisdiction of the Federal Court of Australia also includes jurisdiction in any matter:

(a) in which the Commonwealth is seeking an injunction or a declaration; or

(b) arising under the Constitution, or involving its interpretation; or

(c) arising under any laws made by the Parliament, other than a matter in respect of which a criminal prosecution is instituted or any other criminal matter.

Note: Paragraph (c) does not prevent other laws of the Commonwealth conferring criminal jurisdiction on the Federal Court of Australia.

*Jurisdiction for certain writs that relate to criminal prosecutions etc.*

(1B) If a decision to prosecute a person for an offence against a law of the Commonwealth, a State or a Territory has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a court of a State or Territory:

(a) the Federal Court of Australia does not have jurisdiction with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision; and

(b) the Supreme Court of the State or Territory in which the prosecution is proposed to be commenced is invested with, or has conferred on it, jurisdiction with respect to any such matter.

(1C) Subject to subsection (1D), at any time when:

(a) a prosecution for an offence against a law of the Commonwealth, a State or a Territory is before a court of a State or Territory; or

(b) an appeal arising out of such a prosecution is before a court of a State or Territory;

the following apply:

(c) the Federal Court of Australia does not have jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or

prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision;

(d) the Supreme Court of the State or Territory in which the prosecution or appeal is before a court is invested with, or has conferred on it, jurisdiction with respect to any such matter.

(1D) Subsection (1C) does not apply where a person has applied for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth in relation to a related criminal justice process decision before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.

(1E) Where subsection (1D) applies, the prosecutor may apply to the court for a permanent stay of the proceedings referred to in that subsection, and the court may grant such a stay if the court determines that:

(a) the matters the subject of the proceedings are more appropriately dealt with in the criminal justice process; and

(b) a stay of proceedings will not substantially prejudice the person.

*Jurisdiction for certain writs that relate to civil proceedings*

(1EA) If:

(a) a civil proceeding is before the Family Court of Australia, the Federal Magistrates Court or a court of a State or Territory; or

(b) an appeal arising out of such a proceeding is before the Family Court of Australia or a court of a State or Territory;

the following apply:

(c) the Federal Court of Australia does not have jurisdiction with respect to any matter in which a person who is or was a party to the proceeding seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related civil proceeding decision;

(d) the following court is invested with, or has conferred on it, jurisdiction with respect to any such matter:



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(i) if the civil proceeding or appeal is before the Family Court of Australia—that court; or

(ii) if the civil proceeding is before the Federal Magistrates Court—that court; or

(iii) if the civil proceeding or appeal is before a court of a State or Territory—the Supreme Court of the State or Territory.

*Jurisdictional rules to apply despite any other law*

(1F) Subsections (1B), (1C), (1D), (1E) and (1EA) have effect despite anything in any other law. In particular:

(a) neither the *Jurisdiction of Courts (Cross-vesting) Act 1987*, nor any other law, has the effect of giving the Federal Court of Australia jurisdiction contrary to subsection (1B), (1C) or (1EA); and

(b) neither section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, nor any other law, has the effect of removing from the Supreme Court of a State or Territory the jurisdiction given to that Court by subsection (1B), (1C) or (1EA).

*References to officer or officers of the Commonwealth*

(2) The reference in subsection (1), (1B), (1C) or (1D) to an officer or officers of the Commonwealth does not include a reference to a Judge or Judges of the Family Court of Australia.

*Definitions*

(3) In this section:

***civil proceeding*** has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

***related civil proceeding decision***, in relation to a civil proceeding, means:

(a) a decision of the Attorney-General to give:

(i) notice under section 6A of the *National Security Information (Criminal and Civil Proceedings) Act 2004* in relation to the proceeding; or

(ii) a certificate under section 38F or 38H of that Act in relation to the proceeding; or

(b) a decision of the Minister appointed by the Attorney-General under section 6A of that Act to give:

(i) notice under section 6A of that Act in relation to the proceeding; or

(ii) a certificate under section 38F or 38H of that Act in relation to the proceeding.

***related criminal justice process decision***, in relation to an offence, means:

(a) a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

(i) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and

(ii) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and

(iii) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and

(iv) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and

(v) a decision in connection with an appeal arising out of the prosecution; or

(b) a decision of the Attorney-General to give a certificate under section 26 or 28 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* before or during a federal criminal proceeding (within the meaning of that Act) in relation to the offence.



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# Part VII—Removal of causes

## 40 Removal by order of the High Court

(1) Any cause or part of a cause arising under the Constitution or involving its interpretation that is at any time pending in a federal court other than the High Court or in a court of a State or Territory may, at any stage of the proceedings before final judgment, be removed into the High Court under an order of the High Court, which may, upon application of a party for sufficient cause shown, be made on such terms as the Court thinks fit, and shall be made as of course upon application by or on behalf of the Attorney-General of the Commonwealth, the Attorney-General of a State, the Attorney-General of the Australian Capital Territory or the Attorney-General of the Northern Territory.

(2) Where:

(a) a cause is at any time pending in a federal court other than the High Court or in a court of a Territory; or

(b) there is at any time pending in a court of a State a cause involving the exercise of federal jurisdiction by that court;

the High Court may, upon application of a party or upon application by or on behalf of the Attorney-General of the Commonwealth, at any stage of the proceedings before final judgment, order that the cause or a part of the cause be removed into the High Court on such terms as the Court thinks fit.

(3) Subject to the Constitution, jurisdiction to hear and determine a cause or part of a cause removed into the High Court by an order under subsection (2), to the extent that that jurisdiction is not otherwise conferred on the High Court, is conferred on the High Court by this section.

(4) The High Court shall not make an order under subsection (2) unless:

(a) all parties consent to the making of the order; or

(b) the Court is satisfied that it is appropriate to make the order having regard to all the circumstances, including the interests of the parties and the public interest.



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(5) Where an order for removal is made under subsection (1) or (2), the proceedings in the cause and such documents, if any, relating to the cause as are filed of record in the court in which the cause was pending, or, if part only of a cause is removed, a certified copy of those proceedings and documents, shall be transmitted by the Registrar or other proper officer of that court to the Registry of the High Court.

## 41 Proceedings after removal

When a cause or part of a cause is removed into the High Court under section 40, further proceedings in that cause or part of a cause shall be as directed by the High Court.

## 42 Remittal of causes

(1) Where a cause or part of a cause is removed into the High Court under section 40, the High Court may, at any stage of the proceedings, remit the whole or a part of that cause or part of a cause to the court from which it was removed, with such directions to that court as the High Court thinks fit.

(2) Where it appears to the High Court that the High Court does not have original jurisdiction, whether by virtue of subsection (3) of section 40 or otherwise, in a cause or part of a cause that has been removed into the High Court under section 40, the High Court shall proceed no further in the cause or part of a cause but shall remit it to the court from which it was removed.

## 43 Effect of interlocutory orders etc. before removal of cause

Where a cause is removed in whole or in part into the High Court from another court:

(a) every order relating to the custody or preservation of any property the subject-matter of the cause that has been made before the removal remains in force until it is discharged or varied by the High Court;

(b) any attachment or sequestration of the goods or estate of a defendant had in the cause before the removal holds the goods or estate so attached or sequestered to answer the final judgment of the High Court in the same manner as by law



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they would have been held to answer the final judgment of the court in which the cause was commenced;

(c) all undertakings or security given by any party in the cause before the removal remain valid and effectual; and

(d) all injunctions, orders and other proceedings granted, made or taken in the cause before the removal remain in full force and effect until the High Court otherwise orders.

## 44 Remittal of matters by High Court to other courts

(1) Any matter other than a matter to which subsection (2) applies that is at any time pending in the High Court, whether originally commenced in the High Court or not, or any part of such a matter, may, upon the application of a party or of the High Court's own motion, be remitted by the High Court to any federal court, court of a State or court of a Territory that has jurisdiction with respect to the subject-matter and the parties, and, subject to any directions of the High Court, further proceedings in the matter or in that part of the matter, as the case may be, shall be as directed by the court to which it is remitted.

(2) Where a matter referred to in paragraph 38(a), (b), (c) or (d) is at any time pending in the High Court, the High Court may, upon the application of a party or of the High Court's own motion, remit the matter, or any part of the matter, to the Federal Court of Australia or any court of a State or Territory.

(2A) Where a matter in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party is at any time pending in the High Court, the High Court may, upon the application of a party or of the High Court's own motion, remit the matter, or any part of the matter, to the Federal Court of Australia.

(3) Where the High Court remits a matter, or any part of a matter, under subsection (2) or (2A) to a court:

(a) that court has jurisdiction in the matter, or in that part of the matter, as the case may be; and

(b) subject to any directions of the High Court, further proceedings in the matter, or in that part of the matter, as the case may be, shall be as directed by that court.

(4) The High Court may remit a matter, or any part of a matter, under this section without an oral hearing.



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## 45 Defence in causes removed to High Court

When a cause is removed in whole or in part from any court into the High Court, the defendant may set up by way of defence any matter that he or she might have set up if the cause had been commenced in the High Court, notwithstanding that the court from which the cause was removed did not have jurisdiction to entertain the matter of defence or could not entertain it in the same cause.



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# Part VIII—Enforcement of certain orders concerning court proceedings

## 46 Interpretation

In this Part:

***Australia*** includes the external Territories.

***court*** means a court of Victoria, and includes a Judge of such a court and any Magistrate, Justice of the Peace or Coroner of Victoria.

***make***, in relation to an order being a direction, includes give.

***order*** includes a direction.

***proceedings*** means criminal proceedings arising out of, or in any way relating to, the incident that occurred at the Sheraton Hotel in Melbourne on the night of 30 November 1983 involving the Australian Secret Intelligence Service.

## 47 Application

This Part applies to and in relation to:

(a) all natural persons, whether resident in Australia or not and whether Australian citizens or not; and

(b) all bodies corporate, whether incorporated in Australia or not;

and extends to acts done or omitted to be done outside Australia.

## 48 Crown to be bound

This Part binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

## 49 Contravention of order to constitute contempt

(1) If a court makes an order to which this subsection applies in relation to proceedings before the court on the ground, or on



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grounds that include the ground, however the ground is expressed, that the making of the order is necessary or desirable in the interests of the national or international security of Australia or in the interests of the physical safety of the accused, of a witness or of any other person, a person shall not contravene or fail to comply with the order so far as it is applicable in relation to the last-mentioned person.

(2) By force of this subsection, an order referred to in subsection (1) applies, except so far as is inconsistent with the express terms of the order, in like manner as this Part applies by virtue of section 47.

(3) Subsection (1) applies to:

(a) an order that the proceedings are, or part of the proceedings is, to take place in a closed hearing;

(b) an order that a person is, or persons included in a specified class of persons are, to be excluded from the whole or part of the proceedings;

(c) an order prohibiting or restricting the disclosure of information with respect to the whole or part of the proceedings;

(d) an order prohibiting or restricting the publication of a report of or relating to the whole or part of the proceedings;

(e) an order for the purpose of ensuring that no person without the approval of the court has access, whether before, during or after the hearing of the proceedings, to any indictment, affidavit, exhibit or other document used in the proceedings or to the records of the court relating to the proceedings; or

(f) an order combining any 2 or more of the foregoing orders.

(4) If a person contravenes or fails to comply with an order referred to in subsection (1), the Federal Court of Australia has the same powers to punish the person for the contravention or failure as if the order had been made by that Court.

## 50 Reports

(1) Subject to subsection (2), the Attorney-General of the Commonwealth shall, as soon as practicable after each 30 June, lay before each House of the Parliament a report setting out:



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(a) the number of proceedings in which, to his or her knowledge, orders referred to in subsection 49(1) were made during the year that ended on that date; and

(b) particulars of those proceedings, including particulars of the judgments.

(2) Subsection (1) does not require the making of a report in terms that would be inconsistent with any order referred to in subsection 49(1).

## 51 Application of this Part

This Part does not apply in relation to an order made later than 2 years after the commencement of the *Criminal Proceedings Act 1984* of Victoria.



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# Part VIIIA—Legal practitioners

## 55A Right of barristers and solicitors admitted in federal courts to practise in those courts

A person who has been admitted to practise as a barrister or solicitor, or as both, under rules made in pursuance of paragraph (ga) of section 86 of this Act is, subject to those rules, entitled to practise in any federal court as a barrister or solicitor, or as both, as the case may be.

## 55B Right to practise as barrister or solicitor in federal courts and courts exercising federal jurisdiction

(1) Subject to this section, a person who:

(a) is for the time being entitled to practise as a barrister or solicitor, or as both, in the Supreme Court of a State; or

(b) is for the time being entitled, under a law (including this Act) in force in a Territory, to practise as a barrister or solicitor, or as both, in the Supreme Court of that Territory;

has the like entitlement to practise in any federal court.

(2) A person is not entitled to practise in a federal court as a solicitor by reason of paragraph (b) of the last preceding subsection unless:

(a) he or she has been admitted to practise as a solicitor or legal practitioner by the Supreme Court of the Territory; or

(b) he or she practises as a solicitor in the Territory and his or her sole or principal place of business as a solicitor is in the Territory.

(3) A person is not entitled to practise as a barrister or solicitor in a federal court by reason of subsection (1) unless his or her name appears in the Register of Practitioners kept in accordance with the next succeeding section as a person entitled to practise in that capacity.

(4) A person who is, under subsection (1), entitled to practise as a barrister or solicitor, or both, in any federal court has a right of audience:



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(a) in any court of a State in relation to the exercise by the court of federal jurisdiction; and

(b) in any court of an internal Territory in relation to the exercise by the court of federal-type jurisdiction.

(5) The Chief Justice of the Supreme Court of a State or an internal Territory may direct the Registrar or other proper officer of that Supreme Court to keep a Register of Practitioners for the purposes of subsection (4) and, where such a Register is kept in a State or Territory, a person is not entitled, in a court of that State or Territory, to the right of audience referred to in subsection (4) unless he or she is registered in that Register.

(6) Where a Register is kept in a State or Territory in accordance with subsection (5), a person who satisfies the Registrar or other officer keeping the Register that he or she is a person referred to in subsection (4) is entitled to be registered in that Register.

(7) Where it is proved to the satisfaction of the Supreme Court of a State or Territory constituted by 2 or more Judges that a person who is registered in the Register kept in that State or Territory in accordance with subsection (5) has been guilty of conduct that justifies it in so doing, the Supreme Court may order that person's registration be cancelled or be suspended for a specified period, but the Supreme Court may, at any time, order that the registration of the person be restored or that the suspension be terminated.

(8) The Registrar or other proper officer of the Supreme Court shall make such alterations and notations in a Register kept by him or her as are required by reason of orders of the Supreme Court under subsection (7).

(9) Notwithstanding subsection (6), where the registration of a person has been cancelled in accordance with subsection (7) and has not been restored, or is for the time being suspended, that person is not entitled again to be registered in the Register except pursuant to an order under subsection (7).

(10) In this section:

***federal-type jurisdiction***, in relation to a court of an internal Territory, means jurisdiction conferred on the court by or under a law of the Commonwealth, but does not include jurisdiction



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conferred on the court under an Act providing for the acceptance, administration or government of that Territory.

## 55C Register of Practitioners

(1) For the purposes of section 55B, the Chief Executive and Principal Registrar of the High Court shall cause a Register of Practitioners to be kept at the Registry of the High Court.

(2) Where it is shown to the satisfaction of the Chief Executive and Principal Registrar that a person would, but for subsection (3) of the last preceding section, be for the time being entitled by reason of that section to practise as a barrister or solicitor, or as both, in federal courts, the Chief Executive and Principal Registrar shall cause the name of the person, and the capacity in which he or she is to be entitled to practise, to be entered in the Register of Practitioners.

(3) Where, otherwise than by reason of an order by the High Court under subsection (5), the Chief Executive and Principal Registrar is satisfied that a person whose name appears in the Register of Practitioners:

(a) is not for the time being entitled by reason of the last preceding section:

(i) to practise in federal courts; or

(ii) to practise in federal courts in a capacity specified in the Register; or

(b) would, but for subsection (3) of the last preceding section, be for the time being entitled by reason of that section to practise in federal courts in a capacity not specified in the Register;

the Chief Executive and Principal Registrar shall cause the particulars in the Register in relation to the person to be struck out or amended, as the case requires.

(4) Where the Chief Executive and Principal Registrar is satisfied that a person whose name appears in the Register of Practitioners has died, the Chief Executive and Principal Registrar shall cause the particulars in the Register in relation to the person to be struck out.

(5) Where it is proved to the satisfaction of the High Court that a person whose name appears in the Register of Practitioners has



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been guilty of conduct that justifies it in so doing, the High Court may:

(a) order that the person be not entitled to practise in federal courts and that his or her name be struck off the Register; or

(b) order that the person's entitlement to practise in federal courts be suspended for a specified period;

but the High Court may at any time, by order, revoke or vary such an order.

(6) Where the High Court makes an order under the last preceding subsection, the Chief Executive and Principal Registrar shall cause such entries or amendments to be made in the Register of Practitioners as are necessary to give effect to, or show the effect of, the order.

(7) Where the Chief Executive and Principal Registrar causes an entry to be made in the Register of Practitioners, or causes an entry in the Register to be struck out or amended, the Registrar shall cause the ground on which, and the date upon which, the entry is so made, struck out or amended to be noted in the Register.

## 55E Attorney-General's lawyers

(1) In this section and in sections 55F and 55G:

***Attorney-General's lawyer*** means a person:

(a) whose name is on:

(i) the roll of barristers and solicitors of the High Court kept under the Rules of Court; or

(ii) the roll of barristers, solicitors, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory; and

(b) who is either:

(i) the Secretary of the Attorney-General's Department; or

(ii) a person in the Attorney-General's Department who is engaged under the *Public Service Act 1999*.

(2) An Attorney-General's lawyer acting in that capacity is entitled:

(a) to do everything necessary or convenient for that purpose; and

(b) to practise as a barrister, solicitor, or barrister and solicitor in any court and in any State or Territory; and

(c) to all the rights and privileges of so practising;

whether or not he or she is so entitled apart from this subsection.

(3) An Attorney-General's lawyer acting in that capacity in a State or Territory is not subject to a law of a State or Territory that relates to legal practitioners except to the extent that such laws:

(a) impose rights, duties or obligations on legal practitioners in relation to their clients or to the courts; or

(b) provide for disciplinary proceedings in relation to the misconduct of legal practitioners.

(4) Subsection (3) is subject to subsection (6) and to section 55F (Attorney-General's lawyer may act for more than one party).

(5) In considering the nature of the rights, duties and obligations of an Attorney-General's lawyer in relation to a client, regard must be had to the lawyer's position as a person in the Attorney-General's Department engaged under the *Public Service Act 1999*.

(6) An Attorney-General's lawyer acting in that capacity is not subject to a law of a State or Territory that is prescribed for the purposes of this section.

### 55F Attorney-General's lawyer may act for more than one party

An Attorney-General's lawyer may act in a matter for 2 or more parties who have conflicting interests in the matter if to do so has been approved by the Attorney-General:

(a) by way of approval in relation to the particular matter; or

(b) by way of written arrangements covering the circumstances in which an Attorney-General's lawyer may so act.

### 55G Commonwealth may charge for services of Attorney-General's lawyer

(1) The Commonwealth may charge fees:

(a) in relation to services of a legal professional nature provided by an Attorney-General's lawyer in his or her capacity as a person in the Attorney-General's Department engaged under the *Public Service Act 1999*; and

(b) for disbursements incurred by the Commonwealth in the course of providing those services.

(2) If the Commonwealth has charged a client an amount under subsection (1), the amount may be recovered by the client as costs incurred by the client.

## 55H Lawyers employed by a State, the Australian Capital Territory or the Northern Territory

(1) If:

(a) services of a legal professional nature are provided to a person or body (the ***client***) by an officer of, or a person employed in, a Government Department of a State, of the Australian Capital Territory or of the Northern Territory in his or her capacity as such an officer or employee in the course of acting for the client in proceedings in a federal court or in a tribunal established by a law of the Commonwealth; and

(b) the Department charges the client for any of the services or for disbursements incurred in connection with any of the services;

the amount charged may be recovered by the client as costs incurred by the client in the proceedings.

(2) If an amount charged as mentioned in paragraph (1)(b) is not an amount of disbursement then, for the following purposes:

(a) an application to a federal court, or to a tribunal established by a law of the Commonwealth, for the award of costs;

(b) the taxation of those costs;

(c) the recovery of those costs by the client;

the amount charged is taken to have been paid by the client.



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# Part VIIIB—The Australian Government Solicitor

## Division 1—Definitions

### 55I Definitions

In this Part, unless the contrary intention appears:

***AGS lawyer*** means:

(a) the CEO; or

(b) an employee of the AGS whose name is on:

(i) the roll of barristers and solicitors of the High Court kept under the Rules of Court; or

(ii) the roll of barristers, solicitors, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory.

***CEO*** means the Chief Executive Officer of the AGS.

***company*** means a body corporate that is incorporated, or taken to be incorporated, under the *Corporations Act 2001*.

***Finance Minister*** means the Minister administering the *Financial Management and Accountability Act 1997*.

***State*** includes the Australian Capital Territory and the Northern Territory.

***Territory*** does not include the Australian Capital Territory or the Northern Territory.



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## Division 2—Establishment and functions of the Australian Government Solicitor

### 55J Establishment of the Australian Government Solicitor

This Division establishes the Australian Government Solicitor.

### 55K Functions

The AGS has the following functions:

(a) to provide legal services and related services to the Commonwealth;

(b) to provide legal services and related services to persons and bodies for any purpose for which the Commonwealth has power to make laws;

(c) to provide legal services and related services, upon the request of the executive government of a State or of Norfolk Island, to persons and bodies mentioned in subsection 55N(2);

(d) to provide legal services and related services to the Territories;

(e) to perform any function conferred on it by this Act or any other Act;

(f) to do anything incidental to any of its functions.

### 55L Powers

(1) The AGS has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting subsection (1), the AGS has power to do any of the following:

(a) acquire, hold and dispose of real and personal property;

(b) form, or participate in the formation of, companies;

(c) enter into partnerships;

(d) enter into contracts, agreements or arrangements;

(e) raise money, by borrowing or otherwise;

(f) obtain goods or services on credit from any person by the use of a credit card.



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## 55M Constitution

The AGS:

(a) is a body corporate; and

(b) may have a seal; and

(c) may sue and be sued.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the AGS. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

## 55N Persons and bodies for whom the AGS may provide services

(1) In performing its functions, the AGS may provide services to the following:

(a) the Commonwealth;

(b) a person suing or being sued on behalf of the Commonwealth;

(c) a Minister of the Commonwealth;

(d) a body established by an Act or regulations or by a law of a Territory;

(e) an officer of, or a person employed by:

(i) the Commonwealth; or

(ii) a body established by an Act or regulations or by a law of a Territory;

(f) a person holding office under an Act or a law of a Territory;

(g) a member of the Defence Force;

(h) a company in which the Commonwealth has a controlling interest (including a company in which the Commonwealth has a controlling interest through one or more interposed Commonwealth authorities or Commonwealth companies);

(i) a person who has at any time been a person referred to in paragraph (c), (e), (f) or (g).

Note: For ***Territory*** see subsection (5).

(2) In performing its functions, the AGS may provide services to the following persons and bodies if the AGS receives a request to do so from the executive government of the State concerned or of Norfolk Island (as the case requires):

(a) a State or Norfolk Island;



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(b) a person suing or being sued on behalf of a State or of Norfolk Island;
(c) a Minister for a State or a member of the Government of Norfolk Island;
(d) a body established by a law of a State or of Norfolk Island;
(e) a person employed by:
(i) a State or Norfolk Island; or
(ii) a body established by a law of a State or of Norfolk Island;
(f) a person holding office under a law of a State or of Norfolk Island;
(g) a company in which a State or Norfolk Island has a controlling interest (including a company in which the State or Norfolk Island has a controlling interest through one or more interposed State or Norfolk Island authorities or State or Norfolk Island companies).

Note: For ***State*** see section 55I.

(3) The AGS may provide services to a person or body, or class of persons or bodies, not referred to in subsection (1) or (2) if:
(a) the Attorney-General requests the AGS to do so; and
(b) to do so would be within the functions of the AGS.

(4) The AGS may provide services to a person or body, or class of persons or bodies, not referred to in subsection (1) or (2) if:
(a) the CEO so determines; and
(b) to do so would be within the functions of the AGS.

(5) In this section:

***Territory*** does not include the Australian Capital Territory, the Northern Territory or Norfolk Island.

## 55P AGS may charge for services

(1) The AGS may charge fees:
(a) in relation to services provided by it in the course of performing its functions; and
(b) for disbursements incurred by the AGS in the course of providing those services.



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(2) If the AGS has charged a client an amount under subsection (1), the amount may be recovered by the client as costs incurred by the client.



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## Division 3—Capacity of AGS and AGS lawyers to act

### 55Q AGS lawyers

(1) An AGS lawyer acting in that capacity is entitled:

(a) to do everything necessary or convenient for that purpose; and

(b) to practise as a barrister, solicitor, or barrister and solicitor in any court and in any State or Territory; and

(c) to all the rights and privileges of so practising;

whether or not he or she is so entitled apart from this subsection.

(2) An AGS lawyer acting in that capacity in a State or Territory is not subject to a law of a State or Territory that relates to legal practitioners except to the extent that such laws:

(a) impose rights, duties, or obligations on legal practitioners in relation to their clients or to the courts; or

(b) provide for disciplinary proceedings in relation to the misconduct of legal practitioners.

(3) Subsection (2) is subject to subsection (5) and to section 55R (AGS may act for more than one party).

(4) In considering the nature of the rights, duties and obligations of an AGS lawyer in relation to a client, regard must be had to the lawyer's position as an employee of the AGS.

(5) Neither the AGS, nor an AGS lawyer acting in that capacity, is subject to a law of a State or Territory that is prescribed for the purposes of this section.

### 55R AGS may act for more than one party

The AGS may act in a matter for 2 or more parties who have conflicting interests in the matter if to do so has been approved by the Attorney-General:

(a) by way of approval in relation to the particular matter; or

(b) by way of written arrangements covering the circumstances in which the AGS may so act.



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# Division 4—Appointment and terms and conditions of CEO and staff

## 55S Chief Executive Officer of the AGS

(1) There is to be a Chief Executive Officer (the ***CEO***) of the AGS.

(2) The CEO is the director of the AGS for the purposes of the *Commonwealth Authorities and Companies Act 1997*, and has the function of managing the AGS.

## 55T Appointment of CEO

(1) The CEO is to be appointed by instrument in writing signed by the Attorney-General and the Finance Minister.

(2) The CEO must be a person whose name is on:
   (a) the roll of barristers and solicitors of the High Court kept under the Rules of Court; or
   (b) the roll of barristers, solicitors, barristers and solicitors or legal practitioners of the Supreme Court of a State or Territory.

(3) The appointment is to be on a full-time basis.

(4) The CEO holds office for a period of up to 5 years specified in the instrument of appointment, and is eligible for re-appointment.

(5) An appointment under this section is not affected by any defect or irregularity in or in connection with the appointment.

## 55U Terms and conditions of appointment

(1) The CEO's appointment is subject to any terms and conditions set out in the instrument of appointment.

(2) The office of CEO is a principal executive office for the purposes of the *Remuneration Tribunal Act 1973*.



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### 55V Resignation

The CEO may resign from office by giving the Attorney-General and the Finance Minister a signed notice of resignation.

### 55W Termination of CEO's appointment

The Attorney-General and the Finance Minister (acting jointly) may terminate the CEO's appointment at any time, by instrument in writing.

### 55X CEO must disclose interests

(1) The CEO must give written notice to the Attorney-General and the Finance Minister of any interest that the CEO has or acquires if the interest could conflict with the proper performance of the CEO's functions.

(2) In subsection (1), ***interest*** is not limited to a pecuniary interest.

### 55Y Outside employment

The CEO must not, except with the approval of the Attorney-General and the Finance Minister (acting jointly), engage in paid employment outside the duties of the CEO's office.

### 55Z Acting CEO

(1) The Attorney-General and the Finance Minister (acting jointly) may appoint a person to act as CEO:
   (a) if there is a vacancy in the office of CEO, whether or not an appointment has previously been made to the office; or
   (b) during any period, or during all periods, when the CEO is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or



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

### 55ZA Delegation

The CEO may delegate to an employee of the AGS all or any of the CEO's powers.

### 55ZB Staff and consultants

(1) The CEO may, on behalf of the AGS, employ persons as staff of the AGS.

(2) The terms and conditions of employment of staff are to be determined by the CEO in writing.

(3) The CEO may, on behalf of the AGS, engage persons as consultants to provide services to the AGS.



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## Division 5—Money

### 55ZC Exemption from State and Territory taxation

The AGS is not subject to taxation under a law of a State or Territory other than a law prescribed for the purposes of this section.

### 55ZD AGS must make tax-equivalent payments to the Commonwealth

(1) The Attorney-General and the Finance Minister (acting jointly) may inform the CEO in writing of arrangements that are to apply to the AGS in relation to a tax-equivalent payment to be made by the AGS to the Commonwealth in respect of each financial year.

(2) The amount of the payment to be made under the arrangements is to be worked out having regard to the purpose of ensuring that the AGS does not enjoy net competitive advantages over its competitors because of:

(a) the operation of section 55ZC (exemption from State and Territory taxation); or

(b) any other exemption from taxation liability applying to the AGS.

(3) The AGS must pay the amount to the Commonwealth within 4 months after the end of the financial year concerned, unless the Attorney-General and the Finance Minister (acting jointly) determine a period other than 4 months within which the amount, or a specified part of the amount, must be paid.

### 55ZE Corporate governance requirements

(1) The Attorney-General and the Finance Minister (acting jointly) may, after consultation with the CEO, inform the CEO in writing of corporate governance arrangements that are to apply to the AGS.

(2) If so informed, the CEO must ensure that the AGS complies with the arrangements.



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(3) Without limiting subsection (1), corporate governance arrangements may require the AGS:

(a) to pay a dividend to the Commonwealth in respect of a period specified in the arrangements; or

(b) to make a payment of a specified amount to the Commonwealth for the purpose of ensuring that the AGS does not enjoy net competitive advantages over its competitors by virtue of its public sector ownership.

(4) The AGS must pay to the Commonwealth any amount required to be paid under this section.



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# Part VIIIC—Attorney-General's Legal Services Directions

## 55ZF Attorney-General may issue directions

(1) The Attorney-General may issue directions (***Legal Services Directions***):

(a) that are to apply generally to Commonwealth legal work; or

(b) that are to apply to Commonwealth legal work being performed, or to be performed, in relation to a particular matter.

(2) The Attorney-General may publish or give notice of Legal Services Directions in any manner the Attorney-General considers appropriate.

(3) In this section:

***Commonwealth legal work*** means:

(a) any work performed by or on behalf of the AGS in the performance of its functions; or

(b) any legal work performed by a person for any of the following:

(i) the Commonwealth;

(ii) a body established by an Act or regulations or by a law of a Territory (other than the Australian Capital Territory, the Northern Territory or Norfolk Island);

(iii) a company in which the Commonwealth has a controlling interest (including a company in which the Commonwealth has a controlling interest through one or more interposed Commonwealth authorities or Commonwealth companies);

(iv) other persons or bodies referred to in subsection 55N(1), to the extent that the work relates to the person's or body's performance of a Commonwealth or Territory function.



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## 55ZG Compliance with Legal Services Directions

(1) The following persons or bodies must comply with Legal Services Directions that have been published and with Legal Services Directions of which the person or body has been notified:

(a) a person or body referred to in subsection 55N(1);

(b) a person or body referred to in subsection 55N(2), in relation to a matter, if the AGS is acting for the person or body in that matter;

(c) a person or body in respect of whom the Attorney-General has made a request under subsection 55N(3), in relation to a matter, if the AGS is acting for the person or the body in that matter;

(d) a person or body in respect of whom the CEO has made a determination under subsection 55N(4), in relation to a matter, if the AGS is acting for the person or body in that matter;

(e) the AGS;

(f) a legal practitioner or firm of legal practitioners, in relation to a matter, if the legal practitioner or firm is acting for a person or body referred to in subsection 55N(1) in that matter.

(2) Compliance with a Legal Services Direction is not enforceable except by, or upon the application of, the Attorney-General.

(3) The issue of non-compliance with a Legal Services Direction may not be raised in any proceeding (whether in a court, tribunal or other body) except by, or on behalf of, the Commonwealth.

## 55ZH Legal Services Directions and legal professional privilege

(1) If a Legal Services Direction requires a person to provide any information, or produce a document or record, to another person, the person must not refuse to comply with the Direction on the ground of legal professional privilege or of any other duty of confidence.

(2) A person performing Commonwealth legal work (within the meaning of subsection 55ZF(3)) may provide information or produce a document or record relating to that work to the Attorney-General or to a person authorised by the Attorney-General for that purpose.

(3) If:

(a) a person provides information or produces a document or record under subsection (2); and

(b) the person would, apart from this subsection, be breaching legal professional privilege or any other duty of confidence in so doing;

the person is taken, for all purposes, not to have breached legal professional privilege or the duty of confidence in so providing the information or producing the document or record.

(4) If a communication that is the subject of legal professional privilege is disclosed under subsection (1) or (2), then, in spite of the disclosure, privilege is taken not to have been waived in respect of the communication.

## 55ZI Anything done under Legal Services Directions not actionable

(1) The Attorney-General is not liable to an action or other proceeding, whether civil or criminal, for or in relation to an act done or omitted to be done in compliance, or purported compliance, with a Legal Services Direction.

(2) A person (other than the Attorney-General) is not liable to an action or other proceeding, whether civil or criminal, for or in relation to an act done or omitted to be done by the person in compliance, or in good faith in purported compliance, with a Legal Services Direction.



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# Part IX—Suits by and against the Commonwealth and the States

## 56 Suits against the Commonwealth

(1) A person making a claim against the Commonwealth, whether in contract or in tort, may in respect of the claim bring a suit against the Commonwealth:

(a) in the High Court;

(b) if the claim arose in a State or Territory—in the Supreme Court of that State or Territory or in any other court of competent jurisdiction of that State or Territory; or

(c) if the claim did not arise in a State or Territory—in the Supreme Court of any State or Territory or in any other court of competent jurisdiction of any State or Territory.

(2) For the purposes of paragraphs (b) and (c) of the last preceding subsection:

(a) any court exercising jurisdiction at any place in the capital city of a State, or in the principal or only city or town of a Territory, that would be competent to hear the suit if the Commonwealth were, or had at any time been, resident in that city or town, or in a particular area in that city or town, is a court of competent jurisdiction; and

(b) any other court is not a court of competent jurisdiction if its competence to hear the suit would depend upon the place where the Commonwealth resides or carries on business or at any time resided or carried on business.

## 57 Suits by a State against the Commonwealth

Any State making any claim against the Commonwealth, whether in contract or in tort, may in respect of the claim bring a suit against the Commonwealth in the High Court.

## 58 Suits against a State in matters of federal jurisdiction

Any person making any claim against a State, whether in contract or in tort, in respect of a matter in which the High Court has



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original jurisdiction or can have original jurisdiction conferred on it, may in respect of the claim bring a suit against the State in the Supreme Court of the State, or (if the High Court has original jurisdiction in the matter) in the High Court.

### 59 Suits between States

Any State making any claim against another State may in respect of the claim bring a suit against that State in the High Court.

### 60 Injunction against a State and its officers

In a suit against a State brought in the High Court, the High Court may grant an injunction against the State and against all officers of the State and persons acting under the authority of the State, and may enforce the injunction against all such officers and persons.

### 61 Suits by Commonwealth

Suits on behalf of the Commonwealth may be brought in the name of the Commonwealth by the Attorney-General or by any person appointed by him or her in that behalf.

### 62 Suits by a State

Suits on behalf of a State may be brought in the name of the State by the Attorney-General of the State, or by any person appointed by him or her in that behalf.

### 63 Service of process when Commonwealth or State is party

Where the Commonwealth or a State is a Party to a suit, all process in the suit required to be served upon that party shall be served upon the Attorney-General of the Commonwealth or of the State, as the case may be, or upon some person appointed by him or her to receive service.

### 64 Rights of parties

In any suit to which the Commonwealth or a State is a party, the rights of parties shall as nearly as possible be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject.



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## 65 No execution against Commonwealth or a State

No execution or attachment, or process in the nature thereof, shall be issued against the property or revenues of the Commonwealth or a State in any such suit; but when any judgment is given against the Commonwealth or a State, the Registrar or other appropriate officer shall give to the party in whose favour the judgment is given a certificate in the form of the Schedule, or to a like effect.

## 66 Performance by Commonwealth or State

On receipt of the certificate of a judgment against the Commonwealth or a State the Minister for Finance or the Treasurer of the State as the case may be shall satisfy the judgment out of moneys legally available.

## 67 Execution by Commonwealth or State

When in any such suit a judgment is given in favour of the Commonwealth or of a State and against any person, the Commonwealth or the State, as the case may be, may enforce the judgment against that person by process of extent, or by such execution, attachment, or other process as could be had in a suit between subject and subject.



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# Part IXA—Suits relating to the Northern Territory

## 67A Interpretation

In this part, unless the contrary intention appears:

***Commonwealth*** includes a person suing or being sued on behalf of the Commonwealth.

***Territory*** means the Northern Territory, and includes a person suing or being sued on behalf of the Territory.

## 67B Suits between Commonwealth and Northern Territory

The Commonwealth may bring a suit against the Territory, and the Territory may bring a suit against the Commonwealth, in the Supreme Court of the Territory in respect of a cause of any description, whether at law or in equity, including (but without limiting the generality of the foregoing) a claim in tort.

## 67C Jurisdiction of Supreme Court of Territory

The jurisdiction of the Supreme Court of the Territory extends to:

(a) matters in which an injunction or declaratory order or writ of mandamus, prohibition or certiorari is sought by the Commonwealth against the Territory or an officer of the Territory;

(b) matters in which a writ of mandamus or prohibition or an injunction is sought against the Commonwealth or an officer of the Commonwealth, being matters arising in, or under the laws in force in, the Territory; and

(c) matters in which the Supreme Court of the Territory would, but for the repeal of the *Northern Territory Supreme Court Act 1961*, have jurisdiction by virtue of subsection 15(2) of that Act.



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### 67D Prosecution of indictable offences in Supreme Court of Territory

Nothing in this or any other Act shall be taken to limit the power of the Legislative Assembly of the Territory in relation to the making of laws relating to the prosecution in the Supreme Court of the Territory of indictable offences against laws in force in the Territory under or by virtue of the *Northern Territory (Self-Government) Act 1978*.

### 67E No execution against Territory

No execution or attachment, or process in the nature thereof, shall be issued against the property or moneys of the Territory.

### 67F Effect of this Part

(1) Subject to section 67D, nothing in this part shall be taken to limit the operation of any other provision of this Act.

(2) The jurisdiction conferred on the Supreme Court of the Territory by this Part is in addition to, and not in derogation of, any jurisdiction otherwise conferred on that Court.

# Part X—Criminal jurisdiction

## Division 1—Application of laws

### 68 Jurisdiction of State and Territory courts in criminal cases

(1) The laws of a State or Territory respecting the arrest and custody of offenders or persons charged with offences, and the procedure for:

(a) their summary conviction; and

(b) their examination and commitment for trial on indictment; and

(c) their trial and conviction on indictment; and

(d) the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith;

and for holding accused persons to bail, shall, subject to this section, apply and be applied so far as they are applicable to persons who are charged with offences against the laws of the Commonwealth in respect of whom jurisdiction is conferred on the several courts of that State or Territory by this section.

(2) The several Courts of a State or Territory exercising jurisdiction with respect to:

(a) the summary conviction; or

(b) the examination and commitment for trial on indictment; or

(c) the trial and conviction on indictment;

of offenders or persons charged with offences against the laws of the State or Territory, and with respect to the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith, shall, subject to this section and to section 80 of the Constitution, have the like jurisdiction with respect to persons who are charged with offences against the laws of the Commonwealth.

(4) The several Courts of a State or Territory exercising the jurisdiction conferred upon them by this section shall, upon application being made in that behalf, have power to order, upon such terms as they think fit, that any information laid before them in respect of an offence against the laws of the Commonwealth



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shall be amended so as to remove any defect either in form or substance contained in that information.

(5) Subject to subsection (5A):

(a) the jurisdiction conferred on a court of a State or Territory by subsection (2) in relation to the summary conviction of persons charged with offences against the laws of the Commonwealth; and

(b) the jurisdiction conferred on a court of a State or Territory by virtue of subsection (7) in relation to the conviction and sentencing of persons charged with offences against the laws of the Commonwealth in accordance with a provision of the law of that State or Territory of the kind referred to in subsection (7);

is conferred notwithstanding any limits as to locality of the jurisdiction of that court under the law of that State or Territory.

(5A) A court of a State on which jurisdiction in relation to the summary conviction of persons charged with offences against the laws of the Commonwealth is conferred by subsection (2) may, where it is satisfied that it is appropriate to do so, having regard to all the circumstances, including the public interest, decline to exercise that jurisdiction in relation to an offence against a law of the Commonwealth committed in another State.

(5B) In subsection (5A), ***State*** includes Territory.

(5C) The jurisdiction conferred on a court of a State or Territory by subsection (2) in relation to:

(a) the examination and commitment for trial on indictment; and

(b) the trial and conviction on indictment;

of persons charged with offences against the laws of the Commonwealth, being offences committed elsewhere than in a State or Territory (including offences in, over or under any area of the seas that is not part of a State or Territory), is conferred notwithstanding any limits as to locality of the jurisdiction of that court under the law of that State or Territory.

(6) Where a person who has committed, or is suspected of having committed, an offence against a law of the Commonwealth, whether in a State or Territory or elsewhere, is found within an area of waters in respect of which sovereignty is vested in the



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Crown in right of the Commonwealth, he or she may be arrested in respect of the offence in accordance with the provisions of the law of any State or Territory that would be applicable to the arrest of the offender in that State or Territory in respect of such an offence committed in that State or Territory, and may be brought in custody into any State or Territory and there dealt with in like manner as if he or she had been arrested in that State or Territory.

(7) The procedure referred to in subsection (1) and the jurisdiction referred to in subsection (2) shall be deemed to include procedure and jurisdiction in accordance with provisions of a law of a State or Territory under which a person who, in proceedings before a court of summary jurisdiction, pleads guilty to a charge for which he or she could be prosecuted on indictment may be committed to a court having jurisdiction to try offences on indictment to be sentenced or otherwise dealt with without being tried in that court, and the reference in subsections (1) and (2) to ***any such trial or conviction*** shall be read as including any conviction or sentencing in accordance with any such provisions.

(8) Except as otherwise specifically provided by an Act passed after the commencement of this subsection, a person may be dealt with in accordance with provisions of the kind referred to in subsection (7) notwithstanding that, apart from this section, the offence would be required to be prosecuted on indictment, or would be required to be prosecuted either summarily or on indictment.

(9) Where a law of a State or Territory of the kind referred to in subsection (7) refers to indictable offences, that reference shall, for the purposes of the application of the provisions of the law in accordance with that subsection, be read as including a reference to an offence against a law of the Commonwealth that may be prosecuted on indictment.

(10) Where, in accordance with a procedure of the kind referred to in subsection (7), a person is to be sentenced by a court having jurisdiction to try offences on indictment, that person shall, for the purpose of ascertaining the sentence that may be imposed, be deemed to have been prosecuted and convicted on indictment in that court.



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(11) Nothing in this section excludes or limits any power of arrest conferred by, or any jurisdiction vested or conferred by, any other law, including an Act passed before the commencement of this subsection.

## 68A Committals jurisdiction if both Federal Court of Australia and State or Territory court have jurisdiction in relation to indictable offence

(1) This section applies if both:

(a) the Federal Court of Australia; and

(b) a court of a State or Territory (the ***superior State or Territory court***);

have jurisdiction to try a person on indictment for an indictable offence against a law of the Commonwealth (the ***indictable offence***).

*Working out which court the person should be committed to*

(2) If a court of the State or Territory (the ***State or Territory committals court***) has, under subsection 68(2), jurisdiction with respect to the examination and commitment for trial on indictment of a person who is charged with the indictable offence, the court may, in exercising that jurisdiction:

(a) commit the person for trial on indictment for the offence before either:

(i) the Federal Court of Australia; or

(ii) the superior State or Territory court; or

(b) if the person pleads guilty to the offence, commit the person for sentencing for the offence by either:

(i) the Federal Court of Australia; or

(ii) the superior State or Territory court.

This subsection has effect subject to subsections (3) and (4).

Note: Paragraph (2)(b) refers to committal for sentencing. For the power of the State or Territory committal court to commit for sentencing, see subsection 68(7).

(3) Despite subsection 68(1), if:

(a) a person is charged with the indictable offence; and

(b) at the end of the proceedings before the State or Territory committals court, the State or Territory committals court



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proposes to make an order (the ***committal order***) that the person be committed for trial on indictment, or for sentencing, for the indictable offence;

the State or Territory committals court must invite the Director of Public Prosecutions to suggest the court before which the person is to be tried or sentenced.

Note: The State or Territory committals court must make this invitation even if the Director of Public Prosecutions is not a party to the committal proceedings.

(4) When making the committal order, the State or Territory committals court must consider specifying the court suggested by the Director of Public Prosecutions as the court before which the person is to be tried or sentenced.

*Committal court may grant bail to person to appear before Federal Court*

(5) If the committal order relating to the person specifies the Federal Court of Australia, then a power of the State or Territory committals court:

(a) that is conferred by a law applying under subsection 68(1) in relation to indictable offences against the laws of the Commonwealth; and

(b) that enables the State or Territory committals court to grant bail to persons accused of such offences to appear before the superior State or Territory court if committed for trial, or for sentencing, before the superior State or Territory court;

applies as if the power included the power to grant bail to the first-mentioned person to appear before the Federal Court of Australia.

Note: Appeals or reviews of the exercise of this power will be dealt with under the laws of the State or Territory applying under subsection 68(1). However, bail will be dealt with under Part VIB of the *Federal Court of Australia Act 1976* once indictable primary proceedings (within the meaning of that Act) commence for the person.

*If question about person's fitness to be tried*

(6) Subsection 20B(1) of the *Crimes Act 1914* applies as if the reference in that subsection to the court to which the proceedings would have been referred had the person been committed for trial



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were a reference to a court to which the proceedings could have been referred had the person been committed for trial.

Note: This means the committal court may choose whether to refer a question of the person's fitness to be tried to either the Federal Court of Australia or the superior State or Territory court.

## 68B Application of State and Territory laws if Federal Court of Australia and State or Territory court both have jurisdiction in relation to an offence

(1) To avoid doubt:

(a) subsection 68(1) applies to a person:

(i) who is charged with an offence against a law of the Commonwealth; and

(ii) in respect of whom jurisdiction is conferred on a court of a State or Territory by section 68;

even if jurisdiction in relation to that person and that offence is also conferred on the Federal Court of Australia by another law of the Commonwealth; and

(b) subsection 68(1) applies to the person and the offence in relation to:

(i) any proceedings in relation to the offence that are brought before a court of the State or Territory; and

(ii) any proceedings in relation to the offence that are brought before the Federal Court of Australia.

(2) Paragraph (1)(b) has effect subject to section 68C.

## 68C Adjustments to State and Territory laws applying to proceedings before Federal Court of Australia

(1) This section applies if:

(a) an offence referred to in subsection 68(1) is an indictable offence; and

(b) the Federal Court of Australia (the ***Federal Court***) has jurisdiction to try a person on indictment for the offence; and

(c) proceedings commence in the Federal Court in relation to the offence that are:

(i) indictable primary proceedings (within the meaning of the *Federal Court of Australia Act 1976*) (***primary proceedings***); or



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(ii) criminal appeal proceedings (within the meaning of that Act) that relate to primary proceedings; or

(iii) proceedings under section 30CA of that Act that relate to primary proceedings; or

(iv) proceedings under section 30CB of that Act that relate to primary proceedings; or

(v) proceedings referred to the Federal Court under section 20B of the *Crimes Act 1914* (as that section applies because of subsection 68A(6)).

*The State or Territory in which trial proceedings must be heard*

(2) If the proceedings are primary proceedings that:

(a) are to include either the person, the prosecutor or both appearing before the Federal Court in accordance with an order of a court of a State or Territory committing the person for trial on indictment before the Court for the offence; or

(b) if paragraph (a) does not apply—include the filing in the Federal Court, in a State or Territory, of an indictment against the person for the offence;

the Federal Court must hear the proceedings in that State or Territory unless and until the Federal Court makes an order under subsection (3).

Note: The place in which any other proceedings are to be heard is a matter for the Court.

(3) If the proceedings are covered by subsection (2), the Federal Court may, before the jury is empanelled for the trial, make an order specifying the State or Territory in which the Federal Court will hear the proceedings.

(4) Subsections (2) and (3) have effect subject to section 80 of the Constitution and sections 70 and 70A.

*Which State's or Territory's laws are to apply?*

(5) The laws to be applied under subsection 68(1) in relation to the proceedings are those referred to in the following table:



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| **Laws applicable in relation to the proceedings** | | |
|---|---|---|
| **Item** | **If the proceedings are ...** | **the laws to be applied are ...** |
| 1 | primary proceedings (other than proceedings for the sentencing of the person following a trial in the Federal Court) | the laws of the State or Territory in which the Federal Court hears the proceedings. |
| 2 | primary proceedings for the sentencing of the person following a trial in the Federal Court | the laws of the State or Territory applying in relation to the trial at the end of the trial. |
| 3 | appeal proceedings covered by subparagraph (1)(c)(ii) | the laws of the State or Territory applying in relation to the corresponding primary proceedings at the end of those primary proceedings. |
| 4 | proceedings covered by subparagraph (1)(c)(iii) in relation to a case stated, or question reserved, by a court | the laws of the State or Territory applying in the proceedings during which the court stated the case or reserved the question. |
| 5 | proceedings covered by subparagraph (1)(c)(iv) | the laws of the State or Territory applying in relation to the corresponding primary proceedings at the end of those primary proceedings. |
| 6 | proceedings covered by subparagraph (1)(c)(v) as a result of a referral by a court | the laws of the State or Territory applying in the proceedings during which the court made the referral. |

*What those laws include*

(6) The laws of that State or Territory are taken:

(a) to include the Rules of the Supreme Court of that State or Territory that apply in relation to criminal proceedings; and

(b) not to include the Rules of any other court of that State or Territory.

*How those laws apply*

(7) The laws of that State or Territory apply as if any reference in those laws to the Supreme Court of that State or Territory, and any reference to a court that includes a reference to the Supreme Court of that State or Territory, were a reference to the Federal Court.



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(8) The laws of that State or Territory apply to the proceedings only to the extent to which they are:

(a) not inconsistent with the laws of the Commonwealth; and

(b) not inconsistent with the Rules of the Federal Court.



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## Division 2—Indictable offences

### 69 Indictments

(1) Indictable offences against the laws of the Commonwealth shall be prosecuted by indictment in the name of the Attorney-General of the Commonwealth or of such other person as the Governor-General appoints in that behalf.

(2) Any such appointment shall be by commission in the Queen's name, and may extend to the whole Commonwealth or to any State or part of the Commonwealth.

(2A) Nothing in subsection (1):

(a) affects the power of the Director of Public Prosecutions to prosecute by indictment in his or her official name; or

(b) affects, or shall be taken to have affected, the power of a Special Prosecutor to prosecute by indictment in his or her own name;

indictable offences against the laws of the Commonwealth.

(3) Any person committed for trial for an offence against the laws of the Commonwealth may at any time within fourteen days after committal and before the jury is sworn apply to a Justice in Chambers or to a Judge of the Supreme Court of a State for the appointment of counsel for his or her defence. If it be found to the satisfaction of the Justice or Judge that such person is without adequate means to provide defence for himself or herself, and that it is desirable in the interests of justice that such an appointment should be made, the Justice or Judge shall certify this to the Attorney-General, who may if he or she thinks fit thereupon cause arrangements to be made for the defence of the accused person or refer the matter to such legal aid authorities as the Attorney-General considers appropriate. Upon committal the person committed shall be supplied with a copy of this subsection.

### 70 Offences committed in several States

(1) When an offence against the laws of the Commonwealth is begun in one State or part of the Commonwealth and completed in another, the offender may be dealt with tried and punished in either



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State or part in the same manner as if the offence had been actually and wholly committed therein.

(2) This section has effect subject to section 68C.

## 70A Indictable offence not committed in a State

(1) The trial on indictment of an offence against a law of the Commonwealth not committed within any State and not being an offence to which section 70 applies may be held in any State or Territory.

(2) This section has effect subject to section 68C.

## 71 Discharge of persons committed for trial

(1) When any person is under commitment upon a charge of an indictable offence against the laws of the Commonwealth, the Attorney-General or such other person as the Governor-General appoints in that behalf may decline to proceed further in the prosecution, and may, if the person is in custody, by warrant under his or her hand direct the discharge of the person from custody, and he or she shall be discharged accordingly.

(2) Nothing in subsection (1):

(a) affects the power under subsection 9(4) of the *Director of Public Prosecutions Act 1983* of the Director of Public Prosecutions; or

(b) affects, or shall be taken to have affected, the power under subsection 8(2) of the *Special Prosecutors Act 1982* of a Special Prosecutor.

## 71A Trial of indictable offence without preliminary examination

(1) Notwithstanding anything contained in this Part, or any provision of any law of a State or Territory, the Attorney-General of the Commonwealth may file an indictment for any indictable offence against the laws of the Commonwealth in:

(a) the High Court; or

(b) if the Federal Court of Australia has jurisdiction to try a person for the offence—that Court; or

(c) the Supreme Court of a State or Territory;



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without examination or commitment for trial.

(2) Upon an indictment being so filed, the Court or a Justice or Judge thereof, may cause a summons to be issued to the defendant to appear at the time and place mentioned in the summons there to answer the charge mentioned in the indictment, or may issue a warrant for the defendant's arrest, and may hold the defendant in custody or admit the defendant to bail.

(3) Nothing in subsection (1) affects the power under subsection 6(2D) of the *Director of Public Prosecutions Act 1983* of the Director of Public Prosecutions.



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## Division 3—Appeals

### 72 Reservation of points of law

(1) This section applies if a person is indicted before a Court, other than:

(a) the Federal Court of Australia; or

(b) the Supreme Court of a Territory (other than the Australian Capital Territory or the Northern Territory);

for an indictable offence against a law of the Commonwealth.

(1A) The Court (the ***trial court***) before which the person is tried:

(a) must, if an application is made by or on behalf of the person before the jury delivers its verdict on a count in the indictment in relation to the person; and

(b) may in its discretion (either before or after judgment without such an application);

reserve a question of law, in relation to that count, which arises on the trial for the consideration of:

(c) a Full Court of the High Court; or

(d) a Full Court of the Supreme Court of the same State or Territory as the trial court.

(2) If the accused person is convicted, and a question of law has been so reserved before judgment, the Court before which he or she was tried may either pronounce judgment on the conviction and respite execution of the judgment, or postpone the judgment until the question has been considered and decided, and may either commit the person convicted to prison or admit him or her to bail on recognizance with or without sureties, and in such sum as the Court thinks fit, conditioned to appear at such time and place as the Court directs and to render himself or herself in execution or to receive judgment as the case may be.

(3) The presiding judge is thereupon required to state in a case signed by him or her the question of law so reserved with the special circumstances upon which it arose, and if it be reserved for the High Court the case shall be transmitted to the Registry of the High Court.



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## 73 Hearing

Any question so reserved shall be heard and determined after argument by and on behalf of the Crown and the convicted person or persons if they desire that the question shall be argued, and the Court may:

(a) affirm the judgment given at the trial; or

(b) set aside the verdict and judgment and order a verdict of not guilty or other appropriate verdict to be entered; or

(c) arrest the judgment; or

(d) amend the judgment; or

(e) order a new trial; or

(f) make such other order as justice requires;

or the Court may send the case back to be amended or restated.

## 74 Effect of order of Full Court

(1) The proper officer of the Court by which the question reserved was determined shall certify the judgment of the Court under his or her hand and the seal of the Court to the proper officer of the Court in which the trial was had, who shall enter the same on the original record.

(2) If the convicted person is in custody, the proper officer of the Court by which the question reserved was determined shall also forthwith transmit another certificate of the same tenor under his or her hand and the seal of the Court to the superintendent of the prison or other person who has the custody of the convicted person. The certificate shall be a sufficient warrant to all persons for the execution of the judgment if it is certified to have been affirmed or as it is certified to be amended, and execution shall thereupon be executed upon the judgment as affirmed or amended: And if the judgment is set aside or arrested the certificate shall be a sufficient warrant for the discharge of the convicted person from further imprisonment under that judgment, and in that case the superintendent is required forthwith to discharge him or her from imprisonment under that judgment, and if he or she is at large on bail the recognizance of bail shall be vacated at the next criminal sitting of the Court in which the trial was had: And if that Court is directed to pronounce judgment, judgment shall be pronounced at



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the next criminal sitting of the Court at which the convicted person appears to receive judgment.

## 75 Certain errors not to avoid conviction

A conviction cannot be set aside upon the ground of the improper admission of evidence if it appears to the Court that the evidence was merely of a formal character or not material, nor upon the ground of the improper admission of evidence adduced for the defence.

## 76 Appeal from arrest of judgment

(1) This section applies if a Court, other than:

(a) the Federal Court of Australia; or

(b) the Supreme Court of a Territory (other than the Australian Capital Territory or the Northern Territory);

convicts an accused person on indictment for an offence against the laws of the Commonwealth.

(1A) If the Court (the ***trial court***) before which the accused person is convicted arrests judgment at the trial, the Court must on the application of counsel for the prosecution state a case for the consideration of:

(a) a Full Court of the High Court; or

(b) a Full Court of the Supreme Court of the same State or Territory as the trial court.

(2) On the hearing of the case the Full Court may affirm or reverse the order arresting judgment. If the order is reversed the Court shall direct that judgment be pronounced upon the offender, and he or she shall be ordered to appear at such time and place as the Court directs to receive judgment, and an issuing officer (within the meaning of Part IAA of the *Crimes Act 1914*) may issue a warrant for the arrest of the offender.

(3) An offender so arrested may be admitted to bail by order of the Court which may be made in Court or in Chambers, at the time when the order directing judgment to be pronounced is made or afterwards.



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## 77 No other appeal

Except as aforesaid, and except in the case of error apparent on the face of the proceedings, an appeal shall not without the special leave of the High Court be brought to the High Court from a judgment or sentence pronounced on the trial of a person charged with an indictable offence against the laws of the Commonwealth.



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# Part XA—Procedure of the High Court

## Division 1—Trials

### 77A Trial without jury

In every suit in the High Court, unless the Court otherwise orders, the trial shall be by a Justice without a jury.

### 77B Power of High Court to direct trial with jury

The High Court may, in any suit in which the ends of justice appear to render it expedient to do so, direct the trial with a jury of the suit or of an issue of fact, and may for that purpose make all such orders, issue all such writs and cause all such proceedings to be had and taken as the Court thinks necessary, and upon the finding of the jury the Court may give such decision and pronounce such judgment as the case requires.

### 77C Trial of an issue and new trials

(1) The High Court may, in any case in which the Court directs the trial of an issue or grants a new trial, impose such conditions on a party, and direct such submissions to be made by a party, for the purpose of the trial or new trial as are just.

(2) Where the High Court grants a new trial, the Court may:
  (a) grant the new trial, either generally or on particular issues only, as the Court thinks fit; and
  (b) order that testimony of a witness examined at the former trial may be used in the new trial in such manner as is specified in the order.

### 77D Juries

(1) Subject to subsection (4) and to any other law of the Commonwealth, the laws in force in a State or Territory relating to:
  (a) the qualification of jurors;
  (b) the preparation of jury lists and jury panels;
  (c) the summoning, attendance and impanelling of juries;



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(d) the number of jurors;
(e) the right of challenge;
(f) the discharge of juries;
(g) the disagreement of jurors;
(h) the remuneration of jurors; and
(j) other matters concerning jurors after they have been summoned, appointed or sworn;

that apply for the purposes of the trial of civil proceedings in the Supreme Court of that State or Territory extend and shall be applied in civil matters in which a trial is had with a jury in the High Court in that State or Territory.

(2) Subject to subsection (4) and to any other law of the Commonwealth, the laws in force in a State or Territory relating to the matters mentioned in paragraphs (1)(a) to (j), inclusive, that apply for the purposes of the trial of criminal matters in the Supreme Court of that State or Territory extend and shall be applied in the trial of indictable offences in the High Court in that State or Territory.

(3) For the purposes of a trial of a civil or criminal matter in the High Court in a State or Territory as mentioned in subsection (1) or (2), the lists of jurors made for the purposes of the Supreme Court of the State or Territory shall be deemed to have been made as well for the purposes of the High Court.

(4) The precept for a jury shall be issued by the Registrar or such other officer of the High Court as the Court directs, and the Marshal shall prepare the jury panels and summon jurors.

(5) An officer of a State or Territory who has the custody of a jury list shall furnish a copy of the list to the proper officer of the Commonwealth on demand and on payment of a reasonable fee.



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## Division 2—Evidence

### 77E Production of books

(1) The High Court may in any suit order a party to produce any books or writings in his or her possession or power that contain evidence pertinent to any issue in the suit.

(2) If a party fails to comply with an order under subsection (1), the High Court may:

(a) where the party is the plaintiff—dismiss the suit; or

(b) where the party is the defendant—give judgment against the defendant as by default.

### 77F Oaths and affirmations

(1) The High Court may require and administer all necessary oaths and affirmations.

### 77G Orders and commissions for examination of witnesses

The High Court may, in any cause pending in the Court and at any stage of the proceedings:

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

(b) order that a commission issue to a person, either within or beyond Australia, authorizing him or her to take the testimony upon oath of a person orally or on interrogatories;

and the Court may:

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

(d) empower any party to the cause to give in evidence in the cause the testimony so taken on such terms (if any) as the Court directs.



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## 77H Oral and affidavit evidence

(1) On the hearing of any matter, not being the trial of a cause, evidence may be given by affidavit or as otherwise directed or allowed by the High Court.

(2) At the trial of a cause, proof may be given by affidavit of the service of a document in or incidental to the proceedings in the cause or of the signature of a party to the cause or of his or her solicitor to such a document.

(3) The High Court may at any time, for sufficient reason and on such conditions as are just, order that particular facts may be proved by affidavit at the trial of a cause, or that the affidavit of a person may be read at the trial of a cause.

(4) Notwithstanding any order under subsection (3), if a party to a cause desires in good faith that the maker of an affidavit (other than an affidavit referred to in subsection (2)) proposed to be used in the cause be cross-examined with respect to the matters in the affidavit, the affidavit may not be used in the cause unless that person appears as a witness for cross-examination or the High Court, in its discretion, permits the affidavit to be used without the person so appearing.

(5) If the parties to a suit so agree and the High Court does not otherwise order, testimony at the trial of the suit may be given by affidavit.

(6) Subject to the foregoing provisions of this section, testimony at the trial of a cause shall be given orally.



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## Division 3—Defects and errors

### 77J Amendment

(1) At any stage of a proceeding before the High Court, the Court may, on such terms as are just, make such amendment as it thinks necessary to correct any defect or error in the proceeding.

(2) All necessary amendments shall be made for the purpose of determining the real questions in controversy or otherwise depending on the proceedings.

### 77K Formal defects not to invalidate

(1) No proceedings in the High Court are invalidated by a formal defect or an irregularity unless the Court is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by an order of the Court.

(2) The High Court may, on such conditions (if any) as the Court thinks fit, make an order declaring that a proceeding is not invalid by reason of a defect that it considers to be formal, or by reason of an irregularity.

## Division 4—Reserved judgments

### 77L Reserved judgments

(1) When any cause or matter, after being fully heard before a Full Court, is ordered to stand for judgment, it is not necessary that all the Justices before whom it was heard be present together in court to declare their opinions on the cause or matter, but the opinion of any of them may be reduced to writing and may be read or otherwise made known by any other Justice at any subsequent sitting of a Full Court at which judgment in the cause or matter is delivered. At that subsequent sitting, it is only necessary for a single Justice to be present in court for the purpose of delivering that judgment.

(2) In any such case the question shall be decided in the same manner, and the judgment of the Court has the same force and effect, as if the Justice whose opinion is so read or otherwise made known had been present in court and had declared his or her opinion in person.



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## Division 5—Judgment and execution

### 77M Enforcement of judgments

(1) Subject to the Rules of Court, a person in whose favour a judgment of the High Court is given is entitled to the same remedies for the enforcement of the judgment in a State or Territory, by execution or otherwise, against the person, or against the property of the person, against whom the judgment is given, as are allowed in like cases by the laws of that State or Territory to persons in whose favour a judgment of the Supreme Court of that State or Territory is given.

(2) This section does not affect the operation of any provision made by or under any other Act or by the Rules of Court for the execution and enforcement of judgments of the High Court.

### 77MA Interest up to judgment

(1) In any proceedings, other than proceedings on appeal, for the recovery of any money (including any debt or damages or the value of any goods) in respect of a cause of action that arises after the commencement of this section, the High Court shall, upon application, unless good cause is shown to the contrary, either:

(a) order that there be included in the sum for which judgment is given interest at such rate as the Court thinks fit on the whole or any part of the money for the whole or part of the period between the date when the cause of action arose and the date as of which judgment is entered; or

(b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which judgment is given a lump sum in lieu of any such interest.

(2) Subsection (1) does not:

(a) authorize the giving of interest upon interest or of a sum in lieu of such interest;

(b) apply in relation to any debt upon which interest is payable as of right whether by virtue of an agreement or otherwise;



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(c) affect the damages recoverable for the dishonour of a bill of exchange;

(d) limit the operation of any enactment or rule of law which, apart from this section, provides for the award of interest; or

(e) authorize the giving of interest, or a sum in lieu of interest, otherwise than by consent, upon any sum for which judgment is given by consent.

(3) Where the sum for which judgment is given (in this subsection referred to as ***the relevant sum***) includes, or where the High Court, in its absolute discretion, determines that the relevant sum includes, any amount for:

(a) compensation in respect of liabilities incurred which do not carry interest as against the person claiming interest or claiming a sum in lieu of interest;

(b) compensation for loss or damage to be incurred or suffered after the date on which judgment is given; or

(c) exemplary or punitive damages;

interest, or a sum in lieu of interest, shall not be given under subsection (1) in respect of any such amount or in respect of so much of the relevant sum as in the opinion of the Court represents any such amount.

(4) Subsection (3) shall not be taken to preclude interest or a sum in lieu of interest being given, pursuant to this section, upon compensation in respect of a liability of the kind referred to in paragraph (3)(a) where that liability has been met by the plaintiff, as from the date upon which that liability was so met.

## 77N Interest on judgment debts

A judgment debt under a judgment of the High Court carries interest, at such rate as is fixed by the Rules of Court, from the date as of which the judgment is entered.

## 77P Interpleader

When any claim is made to property taken in execution upon process issued out of the High Court, the Marshal or a Deputy Marshal may take in the Supreme Court of the State or Territory in which the property is situated the same proceedings by way of interpleader as if the process had been issued out of that Supreme



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Court, and that Supreme Court and the Judges of that Supreme Court have jurisdiction to entertain and determine the matter.

## 77Q Discharge of property taken in execution

A seizure or attachment of property in execution upon process issued out of the High Court becomes inoperative upon the occurrence of any event by which, according to the laws of the State or Territory in which the property is situated, the seizure or attachment would become inoperative if made upon like process issued out of the Supreme Court of that State or Territory.



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## Division 6—Receivers and managers

### 77R Receivers and managers

(1) The High Court may, at any stage of a proceeding and on such terms and conditions as the Court thinks fit, appoint a receiver or manager in any case in which it appears to the Court to be just or convenient to do so.

(2) A receiver or manager appointed under subsection (1) may, without the previous leave of the High Court, be sued in respect of any act or transaction done or entered into by him or her in carrying on the business connected with the property of which he or she is receiver or manager.

(3) When in any cause pending in the High Court a receiver or manager appointed by the Court is in possession of any property, the receiver or manager shall manage and deal with the property according to the requirements of the laws of the State or Territory in which the property is situated in the same manner as that in which the owner or possessor of the property would be bound to do if in possession of the property.



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# Part XB—Appeals to the High Court

## Division 1—Security

### 77S Security

(1) The Rules of Court may make provision for and in relation to the giving, in an appeal to the Court, of security for the prosecution of the appeal without delay and for the payment of costs that may be awarded against the appellant.

(2) If security is not given as required by or in accordance with the Rules of Court, the High Court may order that the appeal be dismissed.

(3) This section does not affect the operation of any provision made by or under any other Act for or in relation to the giving of security.



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## Division 2—Procedure

### 77T Institution of appeals

Appeals to the High Court shall be instituted within such time and in such manner as are prescribed by Rules of Court.

### 77U Stay of proceedings

When an appeal has been instituted, the High Court or the Court or Judge appealed from may order a stay of all or any proceedings under the judgment appealed from.

### 77V Death of party to an appeal

(1) When a party to a judgment from which an appeal lies to the High Court has, whether before or after the commencement of this section, died before the time allowed for instituting an appeal has expired, it is not necessary to revive the cause or matter by any formal proceedings.

(2) If the personal representative of the deceased party desires to appeal, he or she may file in the Court by which the judgment was given or made a duly certified copy of the instrument by which he or she is appointed, and thereupon may institute an appeal in the same manner as the party whom he or she represents might have done.

(3) In the case of the death of the party in whose favour the judgment is given or made, notice of appeal may be given to his or her personal representative, or, if there is no such representative, to such person as the High Court directs.



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# Part XI—Supplementary provisions

## Division 1—Appearance of Parties

### 78 Appearance of parties

In every Court exercising federal jurisdiction the parties may appear personally or by such barristers or solicitors as by this Act or the laws and rules regulating the practice of those Courts respectively are permitted to appear therein.



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## Division 1A—Provisions relating to Constitutional matters

### 78AA State includes Australian Capital Territory and Northern Territory

In this Division:

***State*** includes the Australian Capital Territory and the Northern Territory.

### 78A Intervention by Attorneys-General

(1) The Attorney-General of the Commonwealth may, on behalf of the Commonwealth, and the Attorney-General of a State may, on behalf of the State, intervene in proceedings before the High Court or any other federal court or any court of a State or Territory, being proceedings that relate to a matter arising under the Constitution or involving its interpretation.

(2) Where the Attorney-General of the Commonwealth or of a State intervenes in proceedings in a court under this section, the court may, in the proceedings, make such order as to costs against the Commonwealth or the State, as the case may be, as the court thinks fit.

(3) Where the Attorney-General of the Commonwealth or of a State intervenes in proceedings in a court under this section, then, for the purposes of the institution and prosecution of an appeal from a judgment given in the proceedings, the Attorney-General of the Commonwealth or the State, as the case may be, shall be taken to be a party to the proceedings.

(4) Where the Attorney-General of the Commonwealth or of a State institutes an appeal from a judgment given in proceedings in which the Attorney-General of the Commonwealth or the State, as the case may be, has intervened under this section, a court hearing the appeal may make such order as to costs against the Commonwealth or the State, as the case may be, as the court thinks fit.



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## 78B Notice to Attorneys-General

(1) Where a cause pending in a federal court including the High Court or in a court of a State or Territory involves a matter arising under the Constitution or involving its interpretation, it is the duty of the court not to proceed in the cause unless and until the court is satisfied that notice of the cause, specifying the nature of the matter has been given to the Attorneys-General of the Commonwealth and of the States, and a reasonable time has elapsed since the giving of the notice for consideration by the Attorneys-General, of the question of intervention in the proceedings or removal of the cause to the High Court.

(2) For the purposes of subsection (1), a court in which a cause referred to in that subsection is pending:

(a) may adjourn the proceedings in the cause for such time as it thinks necessary and may make such order as to costs in relation to such an adjournment as it thinks fit;

(b) may direct a party to give notice in accordance with that subsection; and

(c) may continue to hear evidence and argument concerning matters severable from any matter arising under the Constitution or involving its interpretation.

(3) For the purposes of subsection (1), a notice in respect of a cause:

(a) shall be taken to have been given to an Attorney-General if steps have been taken that, in the opinion of the court, could reasonably be expected to cause the matters to be notified to be brought to the attention of that Attorney-General; and

(b) is not required to be given to the Attorney-General of the Commonwealth if he or she or the Commonwealth is a party to the cause and is not required to be given to the Attorney-General of a State if he or she or the State is a party to the cause.

(4) The Attorney-General may authorize the payment by the Commonwealth to a party of an amount in respect of costs arising out of the adjournment of a cause by reason of this section.

(5) Nothing in subsection (1) prevents a court from proceeding without delay to hear and determine proceedings, so far as they relate to the grant of urgent relief of an interlocutory nature, where the court thinks it necessary in the interests of justice to do so.



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## Division 2—Application of laws

### 79 State or Territory laws to govern where applicable

(1) The laws of each State or Territory, including the laws relating to procedure, evidence, and the competency of witnesses, shall, except as otherwise provided by the Constitution or the laws of the Commonwealth, be binding on all Courts exercising federal jurisdiction in that State or Territory in all cases to which they are applicable.

(2) A provision of this Act does not prevent a law of a State or Territory covered by subsection (3) from binding a court under this section in connection with a suit relating to the recovery of an amount paid in connection with a tax that a law of a State or Territory invalidly purported to impose.

(3) This subsection covers a law of a State or Territory that would be applicable to the suit if it did not involve federal jurisdiction, including, for example, a law doing any of the following:

(a) limiting the period for bringing the suit to recover the amount;

(b) requiring prior notice to be given to the person against whom the suit is brought;

(c) barring the suit on the grounds that the person bringing the suit has charged someone else for the amount.

(4) For the purposes of subsection (2), some examples of an amount paid in connection with a tax are as follows:

(a) an amount paid as the tax;

(b) an amount of penalty for failure to pay the tax on time;

(c) an amount of penalty for failure to pay enough of the tax;

(d) an amount that is paid to a taxpayer by a customer of the taxpayer and is directly referable to the taxpayer's liability to the tax in connection with the taxpayer's dealings with the customer.



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## 80 Common law to govern

So far as the laws of the Commonwealth are not applicable or so far as their provisions are insufficient to carry them into effect, or to provide adequate remedies or punishment, the common law in Australia as modified by the Constitution and by the statute law in force in the State or Territory in which the Court in which the jurisdiction is exercised is held shall, so far as it is applicable and not inconsistent with the Constitution and the laws of the Commonwealth, govern all Courts exercising federal jurisdiction in the exercise of their jurisdiction in civil and criminal matters.

## 80A Application of sections 79 and 80 to Territory courts

The provisions of the last two preceding sections apply, in so far as they are capable of application, to and in relation to a court of a Territory exercising jurisdiction in a suit brought by virtue of section 56 or Part IXA.

## 81 Security of the peace and for good behaviour

The Justices of the High Court, the Judges of the Federal Court of Australia, and the Judges and magistrates of the several States and Territories who are empowered by law to authorize arrests for offences against the laws of the Commonwealth, shall have the like authority to hold to security of the peace and for good behaviour in matters arising under the laws of the Commonwealth as may be lawfully exercised by any Judge or Magistrate of the respective States and Territories in other cases cognisable before them.



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## Division 3—Venue

### 82 Venue in suits for penalties

Suits to recover pecuniary penalties and forfeitures under the laws of the Commonwealth may be brought either in the State or Territory where they accrue or in the State or Territory where the offender is found.

### 83 Venue in suits for taxes

Suits to recover taxes accruing under any revenue law of the Commonwealth may be brought either in the State or Territory where the liability for the tax occurs or in the State or Territory where the debtor resides.

### 84 Venue in suits for forfeiture

Proceedings on seizures made on the high seas for forfeiture under any law of the Commonwealth may be prosecuted in any State or Territory into which the property seized is brought. Proceedings on such seizures made within any State or Territory shall be prosecuted in the State or Territory where the seizure is made, except in cases when it is otherwise provided by law.

### 85 Property seized as forfeited

All property taken or obtained by any officer or person under the authority of any revenue law of the Commonwealth shall be deemed to be in the custody of the law, and subject only to the orders and judgments of the Courts having jurisdiction thereof under this or any Act.



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## Division 4—Rules of Court

### 86 Rules of Court

(1) The Justices of the High Court or a majority of them may make Rules of Court necessary or convenient to be made for carrying into effect the provisions of this Act or so much of the provisions of any other Act as confers jurisdiction on the High Court or relates to the practice or procedure of the High Court, and in particular for the following matters, that is to say:

(a) Appointing and regulating the sittings of the High Court and of the Justices;

(b) Regulating procedure pleading and practice in the High Court in civil or criminal matters in the exercise both of its original and of its appellate jurisdiction;

(ba) Regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given;

(d) Prescribing the forms to be used for the purposes of the proceedings of the High Court;

(e) Prescribing and regulating the fees to be charged by practitioners practising in the High Court for the work done by them in relation to proceedings in the Court and for the taxation of their bills of costs, either as between party and party or as between solicitor and client;

(ga) Providing for the admission of persons to practise as barristers or solicitors in any Federal Court, and prescribing the conditions of and qualifications for admission, and continuance of the right to practise as aforesaid;

(h) Generally regulating all matters of practice and procedure in the High Court.

(2) The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under this Act or another Act:

(a) as if a reference to a legislative instrument were a reference to a rule of court; and

(b) as if a reference to a rule-maker were a reference to the Chief Justice acting on behalf of the Justices of the Court; and



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(c) subject to such further modifications or adaptations as are provided for in regulations made under paragraph 88(cb) of this Act.

(3) Despite the fact that section 16 of the *Legislative Instruments Act 2003* does not apply in relation to rules of court made by the Court under this Act or another Act, the Department may provide assistance in the drafting of any of those Rules if the Chief Justice so desires.

## 88 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations:

(c) prescribing the content and form of a notice to be given under subsection 78B(1) and specifying the documents (if any) that are to accompany such a notice;

(ca) prescribing the fees payable in respect of proceedings in the High Court and the execution of the process of the High Court;

(cb) modifying or adapting provisions of the *Legislative Instruments Act 2003* (other than provisions of Part 5 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) in their application to the Court;

(d) prescribing the practice and procedure for the filing and giving of such a notice, including the manner in which, the time within which, the persons to whom, and the persons by whom, such a notice is to be given; and

(e) specifying any affidavits to be filed following the giving of a notice under subsection 78B(1) and prescribing the persons by whom and times within which the affidavits are to be filed.



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# The Schedule

Section 65

FORM OF CERTIFICATE OF JUDGMENT

A.B. v. The Commonwealth (*or as the case may be*).

I hereby certify that A.B. of (*address and occupation*) did on the day of, 19 , obtain a judgment of the (*name of Court*) in his or her (*as the case may be*) favour and that by that judgment the sum of was awarded to him or her (*as the case may be*).

Dated this day of , 19 .

Registrar (*or as the case may be*).



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# Notes to the *Judiciary Act 1903*

## Note 1

The *Judiciary Act 1903* as shown in this compilation comprises Act No. 6, 1903 amended as indicated in the Tables below.

The *Judiciary Act 1903* was affected by section 44 of the *CSL Sale Act 1993*.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, *see* Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 31 March 1999 is not included in this compilation. For subsequent information *see* Table A.

## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *Judiciary Act 1903* | 6, 1903 | 25 Aug 1903 | 25 Aug 1903 | |
| *Judiciary Act 1906* | 5, 1906 | 28 Aug 1906 | 28 Aug 1906 | — |
| *Judiciary Act 1907* | 8, 1907 | 14 Oct 1907 | 14 Oct 1907 | — |
| *Judiciary Act 1910* | 34, 1910 | 1 Dec 1910 | 1 Dec 1910 | — |
| *Judiciary Act 1912* | 31, 1912 | 24 Dec 1912 | 24 Dec 1912 | — |
| *Judiciary Act 1914* | 11, 1914 | 29 Oct 1914 | 29 Oct 1914 | — |
| *Judiciary Act 1915* | 4, 1915 | 1 May 1915 | 1 May 1915 | — |
| **as amended by** | | | | |
| *Judiciary Act 1920* | 38, 1920 | 30 Oct 1920 | 30 Oct 1920 | — |
| *Judiciary Act 1920* | 38, 1920 | 30 Oct 1920 | 30 Oct 1920 | — |
| *Judiciary Act 1926* | 39, 1926 | 11 Aug 1926 | 11 Aug 1926 | — |
| *Judiciary Act 1927* | 9, 1927 | 8 Apr 1927 | 2 Sept 1929 (*see Gazette* 1929, p. 1854) | — |
| *Judiciary Act 1932* | 60, 1932 | 5 Dec 1932 | 5 Dec 1932 | — |
| *Seat of Government Supreme Court Act 1933* | 34, 1933 | 9 Dec 1933 | 1 Jan 1934 | — |
| *Judiciary Act 1933* | 65, 1933 | 15 Dec 1933 | 15 Dec 1933 | — |
| *Statute Law Revision Act 1934* | 45, 1934 | 6 Aug 1934 | 6 Aug 1934 | — |
| *Judiciary Act 1937* | 5, 1937 | 3 July 1937 | 3 July 1937 | S. 5 |
| *Judiciary Act 1939* | 43, 1939 | 23 Nov 1939 | 23 Nov 1939 | — |
| *Judiciary Act 1940* | 50, 1940 | 22 Aug 1940 | 22 Aug 1940 | S. 3 |



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## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *Judiciary Act 1946* | 10, 1946 | 18 Apr 1946 | 16 May 1946 | — |
| *Salaries (Statutory Offices) Adjustment Act 1947* | 52, 1947 | 1 Nov 1947 | 1 Nov 1947 | S. 2(2) |
| *Judges' Pensions Act 1948* | 65, 1948 | 9 Dec 1948 | 9 Dec 1948 | S. 13 |
| *Salaries (Statutory Offices) Adjustment Act 1950* | 51, 1950 | 14 Dec 1950 | 1 July 1950 | — |
| *Statute Law Revision Act 1950* | 80, 1950 | 16 Dec 1950 | 31 Dec 1950 | Ss. 16 and 17 |
| *Judges' Remuneration Act 1955* | 17, 1955 | 9 June 1955 | 1 Jan 1955 | — |
| *Judiciary Act 1955* | 35, 1955 | 16 June 1955 | 14 July 1955 | — |
| *Judiciary Act 1959* | 50, 1959 | 22 May 1959 | 22 May 1959 | — |
| *Judiciary Act 1960* | 32, 1960 | 26 May 1960 | 26 May 1960 | — |
| *Judiciary Act (No. 2) 1960* | 109, 1960 | 16 Dec 1960 | 1 Oct 1960 | — |
| *Judiciary Act 1965* | 91, 1965 | 4 Dec 1965 | 1 July 1965 | — |
| *Judiciary Act 1966* | 55, 1966 | 27 Oct 1966 | 24 Nov 1966 | S. 5(2) |
| *Statute Law Revision (Decimal Currency) Act 1966* | 93, 1966 | 29 Oct 1966 | 1 Dec 1966 | — |
| *Judiciary Act 1968* | 134, 1968 | 9 Dec 1968 | 6 Jan 1969 | S. 5 |
| *Judiciary Act 1969* | 39, 1969 | 14 June 1969 | 14 June 1969 | — |
| *Statute Law Revision Act 1973* | 216, 1973 | 19 Dec 1973 | 31 Dec 1973 | Ss. 9(1) and 10 |
| *Judiciary Amendment Act 1976* | 164, 1976 | 9 Dec 1976 | Ss. 3–9, 11–17 and 18 (to the extent it amends s. 39A(1)(b) of Principal Act): 1 Feb 1977 (*see Gazette* 1977, No. S3, p. 2) Remainder: Royal Assent | Ss. 6(2), 8(2), 9(2) and (3) |
| *Administrative Changes (Consequential Provisions) Act 1978* | 36, 1978 | 12 June 1978 | 12 June 1978 | S. 8(2) |
| *Jurisdiction of Courts (Miscellaneous Amendments) Act 1979* | 19, 1979 | 28 Mar 1979 | Parts II–XVII (ss. 3–123): 15 May 1979 (*see Gazette* 1979, No. S86) Remainder: Royal Assent | S. 124 |
| *Judiciary Amendment Act 1979* | 86, 1979 | 31 Aug 1979 | 1 Oct 1979 (*see Gazette* 1979, No. S187) | — |



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## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *Judiciary Amendment Act (No. 2) 1979* | 138, 1979 | 23 Nov 1979 | 21 Apr 1980 (*see* s. 2 and *Gazette* 1980, No. S82) | S. 18 (am. by 61, 1981, s. 115) |
| **as amended by** | | | | |
| *Statute Law Revision Act 1981* | 61, 1981 | 12 June 1981 | S. 115: Royal Assent *(a)* | — |
| *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982* | 26, 1982 | 7 May 1982 | Part XXVI (ss. 160, 161): 4 June 1982 *(b)* | — |
| *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983* | 39, 1983 | 20 June 1983 | S. 3: Royal Assent *(c)* | S. 7(1) |
| *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983* | 91, 1983 | 22 Nov 1983 | S. 3: 31 May 1985 (*see Gazette* 1985, No. S177) *(d)* | Ss. 2(14) and 6(1) |
| *Director of Public Prosecutions (Consequential Amendments) Act 1983* | 114, 1983 | 14 Dec 1983 | Part X (ss. 20–22): 5 Mar 1984 (*see Gazette* 1984, No. S55) *(e)* | — |
| *Judiciary Amendment Act 1984* | 7, 1984 | 4 Apr 1984 | 4 Apr 1984 | — |
| *Judiciary Amendment Act (No. 2) 1984* | 12, 1984 | 10 Apr 1984 | Ss. 3–6: 1 June 1984 (*see Gazette* 1984, No. S153)<br>S. 7: 1 July 1984 (*see Gazette* 1984, No. S231)<br>Remainder: Royal Assent | S. 3(2) |
| *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984* | 72, 1984 | 25 June 1984 | S. 3: *(f)* | S. 5(1) |
| *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984* | 165, 1984 | 25 Oct 1984 | S. 3: 22 Nov 1984 *(g)* | S. 6(1) |
| *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985* | 65, 1985 | 5 June 1985 | S. 3: 1 Mar 1986 (*see Gazette* 1986, No. S67) *(h)* | S. 10 |
| *Judiciary Amendment Act 1986* | 1, 1986 | 19 Feb 1986 | 19 Feb 1986 | — |



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## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *Statute Law (Miscellaneous Provisions) Act 1988* | 38, 1988 | 3 June 1988 | S. 3: Royal Assent *(j)* | S. 5(1) |
| *Industrial Relations (Consequential Provisions) Act 1988* | 87, 1988 | 8 Nov 1988 | Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 (*see* s. 2(2) and *Gazette* 1989, No. S53) | — |
| *Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988* | 99, 1988 | 2 Dec 1988 | 2 Dec 1988 | — |
| *A.C.T. Self-Government (Consequential Provisions) Act 1988* | 109, 1988 | 6 Dec 1988 | S. 32 (in part): 11 May 1989 (*see Gazette* 1989, No. S164) *(k)* | — |
| *Law and Justice Legislation Amendment Act 1988* | 120, 1988 | 14 Dec 1988 | Part XIII (ss. 40, 41): Royal Assent *(l)* | S. 41(2) |
| *Crimes Legislation Amendment Act 1989* | 108, 1989 | 30 June 1989 | S. 10: 30 June 1990 Parts 5–7 (ss. 17–35): 28 July 1989 Part 8 (ss. 36–43): 1 July 1989 Remainder: Royal Assent | — |
| *Courts and Tribunals Administration Amendment Act 1989* | 157, 1989 | 5 Dec 1989 | Part 1 (ss. 1, 2) and Part 6 (ss. 17, 18): Royal Assent Remainder: 1 Jan 1990 (*see Gazette* 1989, No. S398) | S. 25 |
| *Law and Justice Legislation Amendment Act 1989* | 11, 1990 | 17 Jan 1990 | Part 1 (ss. 1, 2) and Part 3 (ss. 6, 7): Royal Assent Ss. 8–10 and Schedule 1: 17 July 1990 Remainder: 14 Feb 1990 | — |



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## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *Territories Law Reform Act 1992* | 104, 1992 | 30 June 1992 | Ss. 1, 2, 25 and 26: Royal Assent<br>Ss. 9, 10, 19, 21 and 22: 29 June 1993 (*see Gazette* 1993, No. S196)<br>Remainder: 1 July 1992 | — |
| *Law and Justice Legislation Amendment Act (No. 3) 1992* | 165, 1992 | 11 Dec 1992 | S. 4: Royal Assent *(m)* | — |
| *Industrial Relations Reform Act 1993* | 98, 1993 | 22 Dec 1993 | Div. 3 of Part 7 (s. 62): 30 Mar 1994 (*see Gazette* 1994, No. S104) *(n)* | — |
| *Law and Justice Legislation Amendment Act 1993* | 13, 1994 | 18 Jan 1994 | S. 22: 13 Jan 1993<br>Part 6 (ss. 27–41): 11 Apr 1994 (*see Gazette* 1994, No. S126)<br>Remainder: Royal Assent | — |
| *Law and Justice Legislation Amendment Act 1994* | 84, 1994 | 23 June 1994 | Ss. 86–88: Royal Assent *(o)* | S. 86 |
| *Law and Justice Legislation Amendment Act (No. 2) 1994* | 141, 1994 | 28 Nov 1994 | Schedule 2 (items 113–150): Royal Assent *(p)* | — |
| *Evidence (Transitional Provisions and Consequential Amendments) Act 1995* | 3, 1995 | 23 Feb 1995 | S. 14: Royal Assent<br>S. 24: 18 Apr 1995 (*see* s. 2(10)) *(q)* | S. 14 |
| *Law and Justice Legislation Amendment Act (No. 1) 1995* | 175, 1995 | 16 Dec 1995 | 16 Dec 1995 | — |
| *Workplace Relations and Other Legislation Amendment Act 1996* | 60, 1996 | 25 Nov 1996 | Schedule 16 (items 60, 61, 65): 25 May 1997 *(r)*<br>Schedule 19 (item 23): Royal Assent *(r)* | S. 2(2) (am. by 77, 1996, Sch. 3 [item 1])<br>Sch. 16 (item 65) |
| **as amended by** | | | | |
| *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996* | 77, 1996 | 19 Dec 1996 | Schedule 3 (item 1): *(s)* | — |



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## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *Law and Justice Legislation Amendment Act 1999* | 125, 1999 | 13 Oct 1999 | Schedule 14 (item 2): 25 May 1997 *(sa)* | — |
| *Law and Justice Legislation Amendment Act 1997* | 34, 1997 | 17 Apr 1997 | Schedule 11: Royal Assent *(t)* | — |
| *Judiciary Amendment Act 1999* | 7, 1999 | 31 Mar 1999 | Schedules 1–3: 1 Sept 1999 (*see Gazette* 1999, No. S395) Remainder: Royal Assent | Sch. 2 [*see* Table A] |
| *Law and Justice Legislation Amendment Act 1999* | 125, 1999 | 13 Oct 1999 | Schedule 10: Royal Assent *(u)* | Sch. 10 (item 4) [*see* Table A] |
| *Public Employment (Consequential and Transitional) Amendment Act 1999* | 146, 1999 | 11 Nov 1999 | Schedule 1 (items 552–554): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(v)* | — |
| **as amended by** | | | | |
| *Statute Law Revision Act 2002* | 63, 2002 | 3 July 2002 | Schedule 2 (item 24): *(va)* | — |
| *Jurisdiction of Courts Legislation Amendment Act 2000* | 57, 2000 | 30 May 2000 | Schedule 1 (item 56): 1 July 2000 (*see Gazette* 2000, No. GN25) *(w)* Schedule 2 (items 11–16): Royal Assent *(w)* | Sch. 2 (item 16) [*see* Table A] |
| *Corporations (Repeals, Consequentials and Transitionals) Act 2001* | 55, 2001 | 28 June 2001 | Ss. 4–14 and Schedule 3 (item 304): 15 July 2001 (*see Gazette* 2001, No. S285) *(x)* | Ss. 4–14 [*see* Note 1] |
| *Jurisdiction of Courts Legislation Amendment Act 2002* | 70, 2002 | 3 Sept 2002 | Schedules 1 and 2: 14 Oct 2002 (*see Gazette* 2002, No. GN40) Remainder: Royal Assent | — |
| *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* | 140, 2003 | 17 Dec 2003 | S. 4 and Schedule 1 (items 29–31): *(y)* | S. 4 [*see* Table A] |
| *Law and Justice Legislation Amendment Act 2004* | 62, 2004 | 26 May 2004 | Schedule 1 (item 43): 27 May 2004 | — |



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## Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|---|---|---|---|
| *National Security Information (Criminal Proceedings) (Consequential Amendments) Act 2004* | 151, 2004 | 14 Dec 2004 | Schedules 1 and 2: *(z)* Remainder: Royal Assent | — |
| *National Security Information Legislation Amendment Act 2005* | 89, 2005 | 6 July 2005 | Schedule 1: 3 Aug 2005 Remainder: Royal Assent | — |
| *Statute Law Revision Act 2005* | 100, 2005 | 6 July 2005 | Schedule 1 (item 28): Royal Assent | — |
| *Migration Litigation Reform Act 2005* | 137, 2005 | 15 Nov 2005 | Schedule 1: 1 Dec 2005 (*see* F2005L03684) Remainder: Royal Assent | Sch. 1 (items 40, 42, 44, 45) [*see* Table A] |
| *Judiciary Legislation Amendment Act 2006* | 151, 2006 | 7 Dec 2006 | 7 Dec 2006 | Sch. 1 (items 7–16) [*see* Table A] |
| *Judiciary Amendment Act 2008* | 71, 2008 | 1 July 2008 | 2 July 2008 | Sch. 1 (item 3) [*see* Table A] |
| *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* | 54, 2009 | 25 June 2009 | S. 4: Royal Assent Schedule 5 (items 38, 85): *(za)* | S. 4 and Sch. 5 (item 85) [*see* Table A] |
| *Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009* | 106, 2009 | 6 Nov 2009 | Schedule 1 (items 6, 98–108): 4 Dec 2009 | — |
| *Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011* | 3, 2011 | 2 Mar 2011 | Schedule 6: 3 Mar 2011 | — |
| *Statute Law Revision Act 2011* | 5, 2011 | 22 Mar 2011 | Schedule 5 (item 120) and Schedule 7 (item 84): 19 Apr 2011 | — |



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## Act Notes

*(a)* *The Judiciary Amendment Act (No. 2) 1979* was amended by section 115 only of the *Statute Law Revision Act 1981*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

*(b)* The *Judiciary Act 1903* was amended by Part XXVI (sections 160 and 161) only of the *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*, subsection 2(12) of which provides as follows:

(12) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

*(c)* The *Judiciary Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2(12) of which provides as follows:

(12) The amendments of the *Judiciary Act 1903* made by this Act shall come into operation on the day on which this Act receives the Royal Assent.

*(d)* The *Judiciary Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983*, subsections 2(1) and (8) of which provide as follows:

(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(8) Section 88 of the *Judiciary Act 1903* as enacted by this Act shall come into operation on a date to be fixed by Proclamation.

*(e)* The *Judiciary Act 1903* was amended by Part X (sections 20–22) only of the *Director of Public Prosecutions (Consequential Amendments) Act 1983*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation, or shall be deemed to have come into operation, as the case requires, on the day on which the *Director of Public Prosecutions Act 1983* comes into operation.

*(f)* The *Judiciary Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsections 2(1) and (15) of which provide as follows:

(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

(15) The amendments of section 44 of the *Judiciary Act 1903* made by this Act shall come into operation on 1 June 1984 or the day on which this Act receives the Royal Assent, whichever is the later.

*(g)* The *Judiciary Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.

*(h)* The *Judiciary Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(26) of which provides as follows:

(26) The amendment of the *Judiciary Act 1903* made by this Act shall come into operation on the day on which the amendment of the *Federal Court of Australia Act 1976* made by this Act comes into operation.

*(j)* The *Judiciary Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1988*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(k)* The *Judiciary Act 1903* was amended by section 32 (in part) only of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, subsection 2(3) of which provides as follows:

(3) The remaining provisions of this Act (including the amendments made by Schedule 5) commence on a day or days to be fixed by Proclamation.



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## Act Notes

*(l)* The *Judiciary Act 1903* was amended by Part XIII (sections 40 and 41) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(m)* The *Judiciary Act 1903* was amended by section 4 only of the *Law and Justice Legislation Amendment Act (No. 3) 1992*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(n)* The *Judiciary Act 1903* was amended by Division 3 of Part 7 (section 62) only of the *Industrial Relations Reform Act 1993*, subsection 2(4) of which provides as follows:

(4) Subject to subsection (5), Divisions 2, 3 and 4 of Part 7 commence on a day to be fixed by Proclamation.

*(o)* The *Judiciary Act 1903* was amended by sections 87 and 88 only of the *Law and Justice Legislation Amendment Act 1994*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(p)* The *Judiciary Act 1903* was amended by Schedule 2 (items 113–150) only of the *Law and Justice Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(q)* The *Judiciary Act 1903* was amended by section 24 only of the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsection 2(10) of which provides as follows:

(10) Sections 21, 23, and 24 of this Act commence on the day on which section 21 of the *Evidence Act 1995* commences.

*(r)* The *Judiciary Act 1903* was amended by Schedule 16 (items 60 and 61) and Schedule 19 (item 23) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsections 2(1)–(3) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), the items of the Schedules, other than Schedule 5, item 1 of Schedule 9, item 90 of Schedule 16 and the items of Schedules 12 and 19, commence on a day or days to be fixed by Proclamation.

(3) If an item of a Schedule does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

*(s)* The *Workplace Relations and Other Legislation Amendment Act 1966* was amended by Schedule 3 (item 1) of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:

(4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.

The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.

*(sa)* The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 14 (item 2) only of the *Law and Justice Legislation Amendment Act 1999*, subsection 2(8) of which provides as follows:

(8) Item 2 of Schedule 14 is taken to have commenced on 25 May 1997, immediately after the commencement of item 60 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.



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## Act Notes

*(t)* The *Judiciary Act 1903* was amended by Schedule 11 only of the *Law and Justice Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(u)* The *Judiciary Act 1903* was amended by Schedule 10 only of the *Law and Justice Legislation Amendment Act 1999*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

*(v)* The *Judiciary Act 1903* was amended by Schedule 1 (items 552–554) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

*(va)* Subsection 2(1) (item 53) of the *Statute Law Revision Act 2002* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| **Provision(s)** | **Commencement** | **Date/Details** |
| 53. Schedule 2, item 24 | Immediately after the time specified in the *Public Employment (Consequential and Transitional) Amendment Act 1999* for the commencement of item 552 of Schedule 1 to that Act | 5 December 1999 |

*(w)* The *Judiciary Act 1903* was amended by Schedule 1 (item 56) and Schedule 2 (items 11–15) only of the *Jurisdiction of Courts Amendment Act 2000*, subsections 2(1) and (2) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) The items in Schedule 1, other than items 77 to 90, commence on a day or days to be fixed by Proclamation.

*(x)* The *Judiciary Act 1903* was amended by Schedule 3 (item 304) only of the *Corporations (Repeals, Consequentials and Transitionals) Act 2001*, subsections 2(1) and (3) of which provide as follows:

(1) Subject to this section, this Act commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

*(y)* Subsection 2(1) (items 2 and 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provide as follows:

(1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.



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## Act Notes

| Provision(s) | Commencement | Date/Details |
|---|---|---|
| 2. Sections 4 and 5 | Immediately after the commencement of sections 3 to 62 of the *Legislative Instruments Act 2003* | 1 January 2005 |
| 3. Schedule 1 | Immediately after the commencement of sections 3 to 62 of the *Legislative Instruments Act 2003* | 1 January 2005 |

*(z)* Subsection 2(1) (item 2) of the *National Security Information (Criminal Proceedings) (Consequential Amendments) Act 2004* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Provision(s) | Commencement | Date/Details |
|---|---|---|
| 2. Schedules 1 and 2 | Immediately after the commencement of sections 3 to 49 of the *National Security Information (Criminal Proceedings) Act 2004*. | 11 January 2005 |

*(za)* Subsection 2(1) (items 13 and 21) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Provision(s) | Commencement | Date/Details |
|---|---|---|
| 13. Schedule 5, items 32 to 64 | Immediately after the commencement of Part 2-4 of the *Fair Work Act 2009*. | 1 July 2009 (*see* F2009L02563) |
| 21. Schedule 5, Part 3 | Immediately after the commencement of Part 2-4 of the *Fair Work Act 2009*. | 1 July 2009 (*see* F2009L02563) |



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## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Part I** | |
| S. 1 | am. No. 34, 1910; No. 45, 1934<br>rs. No. 50, 1959 |
| S. 1A | ad. No. 50, 1959<br>am. No. 55, 1966; No. 134, 1968<br>rep. No. 216, 1973 |
| S. 2 | am. No. 50, 1959; No. 216, 1973; No. 138, 1979; No. 165, 1992; No. 7, 1999; No. 100, 2005; No. 106, 2009 |
| S. 3 | rep. No. 216, 1973 |
| S. 3A | ad. No. 50, 1959<br>am. No. 32, 1960<br>rs. No. 55, 1966<br>am. No. 216, 1973; No. 164, 1976<br>rs. No. 164, 1976 |
| Part II | rep. No. 138, 1979 |
| Heading to Div. 1 of Part II | ad. No. 216, 1973<br>rep. No. 138, 1979 |
| Heading preceding s. 4 | rep. No. 216, 1973 |
| S. 4 | am. No. 5, 1906; No. 31, 1912; No. 65, 1933; No. 10, 1946<br>rep. No. 138, 1979 |
| Ss. 5–7 | rep. No. 138, 1979 |
| S. 7A | ad. No. 50, 1940<br>rep. No. 138, 1979 |
| S. 8 | rep. No. 138, 1979 |
| S. 9 | am. No. 164, 1976<br>rep. No. 138, 1979 |
| Heading to Div. 2 of Part II | ad. No. 216, 1973<br>rep. No. 138, 1979 |
| Heading preceding s. 10 | rep. No. 216, 1973 |
| S. 10 | am. No. 39, 1926<br>rep. No. 138, 1979 |
| S. 11 | am. No. 9, 1927; No. 50, 1959<br>rep. No. 138, 1979 |
| Ss. 12–14 | rep. No. 138, 1979 |
| **Part III** | |
| **Division 1** | |
| Heading to Div. 1 of Part III | ad. No. 216, 1973 |
| **Division 2** | |
| Heading to Div. 2 of Part III | ad. No. 216, 1973 |
| Heading preceding s. 16 | rep. No. 216, 1973 |
| S. 17 | am. No. 138, 1979 |
| S. 18 | am. No. 164, 1976 |



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## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Division 3** | |
| Heading to Div. 3 of Part III..... | ad. No. 216, 1973 |
| Heading preceding s. 19..... | rep. No. 216, 1973 |
| S. 21 ..... | am. No. 216, 1973; No. 164, 1976; Nos. 19 and 138, 1979 |
| S. 22 ..... | am. No. 164, 1976 |
| S. 23 ..... | rs. No. 31, 1912<br>am. No. 38, 1920; No. 138, 1979; No. 98, 1993; No. 141, 1994; No. 60, 1996 (as am. by No. 125, 1999) |
| **Division 4** | |
| Heading to Div. 4 of Part III..... | ad. No. 216, 1973 |
| Heading preceding s. 24..... | rep. No. 216, 1973 |
| **Division 4A** | |
| Div. 4A of Part III ..... | ad. No. 137, 2005 |
| S. 25A ..... | ad. No. 137, 2005 |
| **Division 5** | |
| Heading to Div. 5 of Part III..... | ad. No. 216, 1973 |
| Heading preceding s. 26..... | rep. No. 216, 1973 |
| **Division 6** | |
| Heading to Div. 6 of Part III..... | ad. No. 216, 1973 |
| Heading preceding s. 28..... | rep. No. 216, 1973 |
| **Part IV** | |
| Heading preceding s. 30..... | rep. No. 216, 1973 |
| S. 30 ..... | am. No. 11, 1914; No. 4, 1915; No. 43, 1939 |
| S. 30A ..... | ad. No. 11, 1914<br>rep. No. 43, 1939 |
| S. 30B ..... | ad. No. 9, 1927<br>rep. No. 34, 1933 |
| S. 33A ..... | ad. No. 38, 1920 |
| **Part V** | |
| **Division 1** | |
| Heading to Div. 1 of Part V ..... | ad. No. 216, 1973 |
| Heading preceding s. 34..... | rep. No. 216, 1973 |
| S. 34 ..... | am. No. 38, 1988 |
| S. 34A ..... | ad. No. 9, 1927<br>rep. No. 34, 1933 |
| S. 35 ..... | am. No. 45, 1934; No. 35, 1955; No. 93, 1966; No. 216, 1973<br>rs. No. 164, 1976<br>am. No. 19, 1979; No. 12, 1984 |
| Heading to s. 35AA ..... | am. No. 70, 2002 |
| S. 35AA..... | ad. No. 65, 1985<br>am. No. 70, 2002 |
| S. 35A ..... | ad. No. 12, 1984 |



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## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Division 2** | |
| Heading to Div. 2 of Part V ..... | ad. No. 216, 1973 |
| Heading preceding s. 36..... | rep. No. 216, 1973 |
| **Part VI** | |
| S. 38 ..... | am. No. 12, 1984; No. 57, 2000 |
| Note to s. 38..... | ad. No. 57, 2000 |
| S. 38A ..... | ad. No. 8, 1907<br>rep. No. 164, 1976 |
| Subhead. to s. 39(2)(d)..... | rep. No. 151, 2006 |
| S. 39 ..... | am. No. 8, 1907; No. 45, 1934; No. 134, 1968; No. 164, 1976; No. 72, 1984; No. 151, 2006 |
| S. 39A ..... | ad. No. 134, 1968<br>am. No. 164, 1976; No. 151, 2006 |
| Subhead. to s. 39B(1)..... | ad. No. 89, 2005 |
| Subhead. to s. 39B(1B) ..... | ad. No. 89, 2005 |
| Subhead. to s. 39B(1F) ..... | ad. No. 89, 2005 |
| Subheads. to s. 39B(2), (3)..... | ad. No. 89, 2005 |
| S. 39B ..... | ad. No. 91, 1983<br>am. No. 72, 1984; No. 87, 1988; No. 98, 1993; No. 60, 1996; No. 34, 1997; No. 125, 1999; No. 57, 2000; No. 151, 2004; No. 89, 2005; No. 54, 2009 |
| Note to s. 39B(1A)..... | ad. No. 106, 2009 |
| **Part VII** | |
| Part VII ..... | rs. No. 164, 1976 |
| S. 40 ..... | am. No. 7, 1907<br>rs. No. 164, 1976<br>am. No. 138, 1979; No. 91, 1983; No. 165, 1992 |
| S. 40A ..... | ad. No. 8, 1907<br>rep. No. 164, 1976 |
| S. 41 ..... | am. No. 8, 1907<br>rs. No. 164, 1976 |
| S. 42 ..... | rs. No. 164, 1976 |
| S. 43 ..... | am. No. 8, 1907<br>rs. No. 164, 1976 |
| S. 44 ..... | rs. No. 164, 1976<br>am. No. 91, 1983; Nos. 12 and 72, 1984; No. 137, 2005 |
| S. 45 ..... | rs. No. 164, 1976<br>am. No. 141, 1994 |
| **Part VIII** | |
| Part VIII ..... | rep. No. 138, 1979<br>ad. No. 7, 1984 |
| Heading to Div. 1 of Part VIII .... | ad. No. 216, 1973<br>rep. No. 138, 1979 |
| S. 46 ..... | rep. No. 164, 1976<br>ad. No. 7, 1984 |



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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| Heading preceding s. 47..... | rep. No. 216, 1973 |
| S. 47 ..... | am. No. 52, 1947; No. 51, 1950; No. 17, 1955; No. 109, 1960; No. 91, 1965; No. 93,1966; No. 39, 1969<br>rs. No. 164, 1976<br>rep. No. 138, 1979<br>ad. No. 7, 1984 |
| S. 48 ..... | am. No. 39, 1969; No. 164, 1976<br>rep. No. 138, 1979<br>ad. No. 7, 1984 |
| Heading preceding s. 48A ..... | ad. No. 39, 1926<br>rep. No. 138, 1979 |
| S. 48A ..... | ad. No. 39, 1926<br>rep. No. 65, 1948 |
| Heading preceding s. 49..... | rep. No. 55, 1966 |
| S. 49 ..... | am. No. 9, 1927; No. 50, 1959<br>rep. No. 55, 1966<br>ad. No. 7, 1984 |
| S. 50 ..... | am. No. 50, 1959<br>rep. No. 55, 1966<br>ad. No. 7, 1984<br>am. No. 141, 1994 |
| Heading to Div. 2 of Part VIII .... | ad. No. 216, 1973<br>rep. No. 138, 1979 |
| Heading preceding s. 51..... | rep. No. 216, 1973 |
| S. 51 ..... | am. No. 216, 1973<br>rep. No. 138, 1979<br>ad. No. 7, 1984 |
| S. 52 ..... | rep. No. 138, 1979 |
| Heading preceding s. 53..... | rep. No. 216, 1973 |
| S. 53 ..... | rep. No. 138, 1979 |
| Heading to Div. 3 of Part VIII .... | ad. No. 216, 1973<br>rep. No. 138, 1979 |
| S. 54 ..... | am. No. 80, 1950<br>rep. No. 138, 1979 |
| S. 55 ..... | rep. No. 138, 1979 |
| **Part VIIIA** | |
| Part VIIIA ..... | ad. No. 55, 1966 |
| S. 55A ..... | ad. No. 55, 1966<br>am. No. 164, 1976 |
| S. 55B ..... | ad. No. 55, 1966<br>am. No. 164, 1976; No. 38, 1988; No. 141, 1994; No. 125, 1999 |
| S. 55C ..... | ad. No. 55, 1966<br>am. No. 164, 1976; No. 138, 1979; Nos. 13 and 141, 1994 |
| S. 55D ..... | ad. No. 55, 1966<br>am. No. 216, 1973; No. 164, 1976; No. 86, 1979; No. 38, 1988; No. 104, 1992<br>rep. No. 3, 2011 |



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## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| S. 55E | ad. No. 55, 1966<br>rs. No. 12, 1984<br>am. No. 109, 1988; No. 11, 1990; No. 165, 1992<br>rs. No. 7, 1999<br>am. No. 146, 1999; Nos. 3 and 5, 2011 |
| S. 55F | ad. No. 165, 1992<br>rs. No. 7, 1999 |
| S. 55G | ad. No. 165, 1992<br>rs. No. 7, 1999<br>am. No. 146, 1999 |
| S. 55H | ad. No. 34, 1997 |
| **Part VIIIB** | |
| Part VIIIB | ad. No. 7, 1999 |
| **Division 1** | |
| S. 55I | ad. No. 7, 1999<br>am. No. 55, 2001; Nos. 3 and 5, 2011 |
| **Division 2** | |
| Ss. 55J–55N | ad. No. 7, 1999 |
| S. 55P | ad. No. 7, 1999 |
| **Division 3** | |
| Ss. 55Q, 55R | ad. No. 7, 1999 |
| **Division 4** | |
| S. 55S | ad. No. 7, 1999 |
| S. 55T | ad. No. 7, 1999<br>am. No. 3, 2011 |
| S. 55U | ad. No. 7, 1999<br>am. No. 62, 2004 |
| Ss. 55V–55Z | ad. No. 7, 1999 |
| Ss. 55ZA, 55ZB | ad. No. 7, 1999 |
| **Division 5** | |
| Ss. 55ZC–55ZE | ad. No. 7, 1999 |
| **Part VIIIC** | |
| Part VIIIC | ad. No. 7, 1999 |
| Ss. 55ZF–55ZI | ad. No. 7, 1999 |
| **Part IX** | |
| S. 56 | am. No. 50, 1959<br>rs. No. 32, 1960<br>am. No. 164, 1976; No. 19, 1979 |
| Ss. 61–63 | am. No. 141, 1994 |
| S. 65 | am. No. 32, 1960; No. 164, 1976 |
| S. 66 | am. No. 36, 1978 |
| **Part IXA** | |
| Part IXA | ad. No. 86, 1979 |
| Ss. 67A–67F | ad. No. 86, 1979 |



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## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Part X** | |
| **Division 1** | |
| Heading to Div. 1 of Part X | ad. No. 216, 1973 |
| Heading preceding s. 68 | rep. No. 216, 1973 |
| S. 68 | am. No. 38, 1920; No. 60, 1932; No. 164, 1976; No. 39, 1983; No. 141, 1994; No. 125, 1999; No. 151, 2006 |
| Ss. 68A–68C | ad. No. 106, 2009 |
| **Division 2** | |
| Heading to Div. 2 of Part X | ad. No. 216, 1973 |
| Heading preceding s. 69 | rep. No. 216, 1973 |
| S. 69 | am. No. 80, 1950; No. 164, 1976; No. 114, 1983; No. 1, 1986; No. 141, 1994 |
| S. 70 | am. No. 106, 2009 |
| S. 70A | ad. No. 164, 1976<br>am. No. 106, 2009 |
| S. 71 | am. No. 114, 1983; No. 141, 1994 |
| S. 71A | ad. No. 4, 1915<br>am. No. 86, 1979; No. 108, 1989; No. 141, 1994; No. 106, 2009 |
| **Division 3** | |
| Heading to Div. 3 of Part X | ad. No. 216, 1973 |
| Heading preceding s. 72 | rep. No. 216, 1973 |
| S. 72 | am. No. 4, 1915; No. 138, 1979; No. 141, 1994; No. 106, 2009 |
| S. 74 | am. No. 138, 1979; No. 141, 1994 |
| S. 76 | am. No. 141, 1994; No. 106, 2009 |
| **Part XA** | |
| Part XA | ad. No. 138, 1979 |
| **Division 1** | |
| Ss. 77A–77D | ad. No. 138, 1979 |
| **Division 2** | |
| S. 77E | ad. No. 138, 1979<br>am. No. 141, 1994 |
| S. 77F | ad. No. 138, 1979<br>am. Nos. 3 and 175, 1995 |
| Ss. 77G, 77H | ad. No. 138, 1979<br>am. No. 141, 1994 |
| **Division 3** | |
| S. 77J | ad. No. 138, 1979 |
| S. 77K | ad. No. 138, 1979<br>am. No. 141, 1994 |
| **Division 4** | |
| S. 77L | ad. No. 138, 1979<br>am. Nos. 84 and 141, 1994 |



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## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Division 5** | |
| S. 77M | ad. No. 138, 1979 |
| S. 77MA | ad. No. 165, 1984 |
| S. 77N | ad. No. 138, 1979 |
| Ss. 77P, 77Q | ad. No. 138, 1979 |
| **Division 6** | |
| S. 77R | ad. No. 138, 1979<br>am. No. 141, 1994 |
| **Part XB** | |
| Part XB | ad. No. 138, 1979 |
| **Division 1** | |
| S. 77S | ad. No. 138, 1979 |
| **Division 2** | |
| Ss. 77T, 77U | ad. No. 138, 1979 |
| S. 77V | ad. No. 138, 1979<br>am. No. 141, 1994 |
| **Part XI** | |
| **Division 1** | |
| Heading to Div. 1 of Part XI | ad. No. 216, 1973 |
| Heading preceding s. 78 | rep. No. 216, 1973 |
| S. 78 | am. No. 164, 1976 |
| **Division 1A** | |
| Div. 1A of Part XI | ad. No. 164, 1976 |
| S. 78AA | ad. No. 91, 1983<br>rs. No. 34, 1997 |
| S. 78A | ad. No. 164, 1976<br>am. No. 38, 1988 |
| S. 78B | ad. No. 164, 1976<br>am. No. 91, 1983; No. 141, 1994 |
| **Division 2** | |
| Heading to Div. 2 of Part XI | ad. No. 216, 1973 |
| Heading preceding s. 79 | rep. No. 216, 1973 |
| S. 79 | am. No. 138, 1979; No. 71, 2008 |
| S. 80 | am. No. 138, 1979; No. 120, 1988 |
| S. 80A | ad. No. 50, 1959<br>am. No. 32, 1960; No. 164, 1976; Nos. 86 and 138, 1979 |
| S. 81 | am. No. 50, 1959; No. 106, 2009 |
| **Division 3** | |
| Heading to Div. 3 of Part XI | ad. No. 216, 1973 |
| Heading preceding s. 82 | rep. No. 216, 1973 |
| Ss. 82–84 | am. No. 50, 1959 |



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## Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| **Division 4** | |
| Heading to Div. 4 of Part XI ..... | ad. No. 216, 1973 |
| Heading preceding s. 86..... | rep. No. 216, 1973 |
| S. 86 ..... | am. No. 5, 1906; No. 5, 1937; No. 50, 1959; No. 138, 1979; No. 157, 1989; No. 140, 2003 |
| S. 87 ..... | rs. No. 5, 1937<br>am. No. 216, 1973<br>rs. No. 26, 1982<br>am. No. 99, 1988<br>rep. No. 140, 2003 |
| S. 88 ..... | ad. No. 34, 1910<br>rep. No. 45, 1934<br>ad. No. 91, 1983<br>am. No. 157, 1989; No. 140, 2003 |
| Part XII..... | ad. No. 34, 1910<br>rep. No. 45, 1934 |
| Ss. 89–94..... | ad. No. 34, 1910<br>rep. No. 45, 1934 |
| **The Schedule** | |
| The Schedule..... | rs. No. 32, 1960<br>am. No. 141, 1994 |



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## Table A

### Application, saving or transitional provisions

*Judiciary Amendment Act 1999* (No. 7, 1999)

## Schedule 2

### 1 Definitions

In this Schedule:

***AGS*** means the Australian Government Solicitor established under the *Judiciary Act 1903*.

***commencement time*** means the time when this Schedule commences.

***former AGS*** means the Australian Government Solicitor established under the *Judiciary Act 1903* as in force immediately before the commencement of Schedule 1.

### 2 AGS successor in law

(1) The AGS is the successor in law of the former AGS.

(2) Without limiting subitem (1), if:

(a) the former AGS was acting in relation to a matter before the commencement time; and

(b) the matter continues after the commencement time;

the AGS is taken to be substituted for the former AGS, for all purposes, in relation to the matter and all references to the former AGS in relation to the matter are taken to be references to the AGS.

### 3 Business of former AGS

At the commencement time, the business of the former AGS becomes the business of the AGS.

### 4 Existing conditions of staff

An officer or employee within the meaning of the *Public Service* Act *1922* transferred to the AGS under section 81C of that Act is to be employed on terms and conditions no less favourable than applied to the officer or employee immediately prior to his or her transfer.



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**Table A**

## 5 Attorney-General may transfer Commonwealth assets to new AGS

(1) The Attorney-General may, by writing, make any or all of the following declarations:

(a) a declaration that a specified asset of the Commonwealth vests in the AGS at a specified time without any conveyance, transfer or assignment;

(b) a declaration that a specified instrument in relation to a specified asset continues to have effect after the asset vests in the AGS as if a reference in the instrument to the Commonwealth were a reference to the AGS;

(c) a declaration that the AGS becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the AGS.

(2) A declaration has effect accordingly.

(3) Subitem (1) does not prevent the Commonwealth from transferring an asset to the AGS otherwise than under that subitem.

## 6 Attorney-General may transfer Commonwealth liabilities to new AGS

(1) The Attorney-General may, by writing, make any or all of the following declarations:

(a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of the AGS at a specified time;

(b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the AGS, as if a reference in the instrument to the Commonwealth were a reference to the AGS;

(c) a declaration that the AGS becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the AGS.

(2) A declaration has effect accordingly.

(3) Subitem (1) does not prevent the Commonwealth from transferring a liability to the AGS otherwise than under that subitem.



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### 7 Transfer of records

(1) The Secretary to the Attorney-General's Department may transfer to the AGS records of the Commonwealth that relate to the functions of the AGS.

(2) In this item:

***record*** has the same meaning as in the *Archives Act 1983*.

### 8 Regulations

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subitem (1), regulations may be made in relation to transitional matters arising out of the abolition of the former AGS or otherwise arising out of the enactment of this Act.

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*Law and Justice Legislation Amendment Act 1999* (No. 125, 1999)

## Schedule 10

### 4 Application

The amendment made by item 3 applies in respect of proceedings pending at the commencement of that item as well as proceedings instituted after that commencement.

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*Jurisdiction of Courts Legislation Amendment Act 2000* (No. 57, 2000)

## Schedule 2

### 16 Application of amendments

(1) In this item:

***commencement*** means the commencement of the amendments of the *Administrative Decisions (Judicial Review) Act 1977*, the *Corporations Act 1989* and the *Judiciary Act 1903* made by Part 1 of this Schedule.

**Table A**

***related criminal justice process decision***, in relation to an offence, has the same meaning as in the following provisions (as amended by Part 1 of this Schedule):

(a) section 9A of the *Administrative Decisions (Judicial Review) Act 1977*;

(b) section 51AA of the *Corporations Act 1989*;

(c) section 39B of the *Judiciary Act 1903*.

(2) The amendments of the *Administrative Decisions (Judicial Review) Act 1977*, the *Corporations Act 1989* and the *Judiciary Act 1903* made by Part 1 of this Schedule apply in relation to:

(a) a decision made on or after the commencement to prosecute a person for an offence, even if the conduct alleged to give rise to the offence occurred before the commencement; or

(b) a related criminal justice process decision made on or after the commencement in relation to an offence, even if either or both of the following apply:

(i) the conduct alleged to give rise to the offence occurred before the commencement;

(ii) the prosecution of the offence, or an appeal arising out of the prosecution, was commenced before the commencement.

(3) The amendments of the *Administrative Decisions (Judicial Review) Act 1977*, the *Corporations Act 1989* and the *Judiciary Act 1903* made by Part 1 of this Schedule also apply in relation to:

(a) a decision made before the commencement to prosecute a person for an offence, unless that decision is the subject of an application that is before a court at 13 April 2000; or

(b) a related criminal justice process decision made before the commencement in relation to an offence, unless the decision is the subject of an application that is before a court at 13 April 2000.



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*Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* (No. 140, 2003)

### 4 Transitional provisions

(1) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:

(a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and

(b) is expressed to require that instrument to be published as a statutory rule under the *Statutory Rules Publication Act 1903*;

any instrument so made is taken to be an instrument referred to in paragraph 6(b) of the *Legislative Instruments Act 2003* despite the repeal by this Act of the *Statutory Rules Publication Act 1903*.

(2) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:

(a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and

(b) is expressed to declare that instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*;

any instrument so made is taken to be an instrument referred to in subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* despite the repeal by this Act of section 46A of the *Acts Interpretation Act 1901*.

(3) If legislation that is in force immediately before the commencing day or that is introduced into the Parliament before that day but that commences on or after that day:

(a) authorised or authorises an instrument to be made in the exercise of a power delegated by the Parliament that adversely affects the rights of a person, or results in the imposition of liabilities on a person; and

(b) provided or provides that the instrument has effect, to the extent that it adversely affects those rights or results in the imposition of those liabilities, despite subsection 48(2) of the *Acts Interpretation Act 1901*, before the date of its notification in the *Gazette*;

that legislation is to be construed, on and after the commencing day or the day of its commencement, whichever last occurs, as if it had

**Table A**

provided instead that the instrument, to the extent that it adversely affects those rights or results in the imposition of those liabilities, has effect, despite subsection 12(2) of the *Legislative Instruments Act 2003*, before its registration under that Act.

(4) If:

(a) legislation (the ***enabling legislation***) in force immediately before the commencing day:

(i) authorises the making of an instrument; and

(ii) does not declare such an instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* but nonetheless makes provision for its disallowance by the application, with or without modification, of the provisions of Part XII of that Act; and

(b) an instrument is made in the exercise of that authority on or after the commencing day; and

(c) the instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* or otherwise;

the enabling legislation has effect, on and after the commencing day, as if:

(d) it had declared such instruments to be disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*; and

(e) it had provided for such modifications of the operation of that section as are necessary to ensure that the effect of the applied provisions of Part XII of the *Acts Interpretation Act 1901* is preserved.

(5) In this section:

***commencing day*** means the commencing day within the meaning of the *Legislative Instruments Act 2003*.



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*Migration Litigation Reform Act 2005* (No. 137, 2005)

## Schedule 1

### 40 Definitions

In this Part:

***commencement day*** means the day on which this Schedule commences.

***migration decision*** has the same meaning as in the *Migration Act 1958*, as amended by Part 1 of this Schedule.

***migration litigation*** has the same meaning as in Part 8B of the *Migration Act 1958*, as amended by Part 1 of this Schedule.

***substantive proceedings*** has the same meaning as in paragraph 503B(1)(b) of the *Migration Act 1958*.

### 42 Transitional provision—migration decision made before commencement day

Where proceedings are commenced on or after the commencement day in relation to a migration decision made before the commencement day, and actual notification of the decision is given before the commencement day:

(a) section 477 of the *Migration Act 1958* applies as if the actual notification of the decision took place on the commencement day; and

(b) section 477A of that Act applies as if the actual notification of the decision took place on the commencement day; and

(c) section 486A of that Act applies as if the actual notification of the decision took place on the commencement day.

### 44 Application of items 5, 7, 8 and 9

The amendments made by items 5, 7, 8 and 9 of this Schedule apply in relation to proceedings commenced on or after the commencement day.

### 45 Application of item 10

The amendment made by item 10 of this Schedule applies in relation to proceedings commenced in the High Court on or after the commencement day.



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**Table A**

*Judiciary Legislation Amendment Act 2006* (No. 151, 2006)

## Schedule 1

### 7 Definitions

In this Part:

***ineffective order*** has the meaning given by item 8.

***liability*** includes a duty or obligation.

***non-judicial officer*** of a court of summary jurisdiction of a State means an officer of the court who is not a magistrate, or arbitrator, of the kind described in paragraph 39(2)(d) of the *Judiciary Act 1903* just before the commencement of this Schedule.

Note: Just before the commencement of this Schedule, paragraph 39(2)(d) of the *Judiciary Act 1903* referred to:

(a) Stipendiary, Police and Special Magistrates, and State Magistrates specially authorised by the Governor-General to exercise federal jurisdiction; and

(b) arbitrators on whom all or part of the jurisdiction of a State court of summary jurisdiction was conferred by a prescribed law of the State.

***proceedings*** includes an initiating application.

***proceedings for the order***, in relation to an ineffective order, means the proceedings in or in relation to which the order was purportedly made.

***right*** includes an interest or status.

### 8 Meaning of *ineffective order*

(1) A reference in this Part to an ***ineffective order*** is a reference to a purported order described in subitem (2). This subitem has effect subject to subitem (3) as it affects the meaning of a reference to an ineffective order in the context of a particular case.

(2) An order that a non-judicial officer of a court of summary jurisdiction of a State has purported to make is an ***ineffective order*** if:

(a) the officer purported to make the order before the commencement of this Part; and

(b) the order was made in the purported exercise of the court's federal jurisdiction; and

(c) paragraph 39(2)(d) of the *Judiciary Act 1903* prohibited the exercise by the officer of the court's federal jurisdiction.



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(3) If a court, or a non-judicial officer of a court of summary jurisdiction of a State, has purported to affirm, vary, revoke, set aside, reverse, revive or suspend an ineffective order, a reference in this Part to the ineffective order is a reference to the order in the form in which, and to the extent to which, it purports or purported to have effect from time to time.

## 9 Rights and liabilities declared in certain cases

The rights and liabilities of all persons are, by force of this item, declared to be, and always to have been, the same as if each ineffective order of a court of summary jurisdiction had been an order made by that court, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

## 10 Effect of declared rights and liabilities

(1) A right or liability conferred, imposed or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction:

(a) is exercisable or enforceable; and

(b) is to be regarded as always having been exercisable or enforceable;

as if it were a right or liability conferred, imposed or affected by an order made by that court, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

(2) The rights and liabilities conferred, imposed or affected by item 9 include (but are not limited to) the right of a person who was a party to the proceeding or purported proceeding in which the ineffective order was made to appeal against that order.

## 11 Effect of things done or omitted to be done under or in relation to rights and liabilities

(1) Any act or thing done or omitted to be done before, at or after the commencement of this Part under or in relation to a right or liability conferred, imposed or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction:

(a) has the same effect, and gives rise to the same consequences, for the purposes of any written or other law; and

(b) is to be regarded as always having had the same effect, and given rise to the same consequences, for the purposes of any written or other law;



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**Table A**

as if it were done or omitted to be done to give effect to, or under the authority of, or in reliance on, an order made by that court, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

(2) Subject to subitem (3), for the purposes of an enforcement law (see subitem (4)), any act or thing done or omitted to be done before, at or after the commencement of this Part:

(a) gives rise to the same consequences; and

(b) is to be regarded as always having given rise to the same consequences;

as if each ineffective order of a court of summary jurisdiction were an order made by that court, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

(3) If, before the commencement of this Part, a court purported to convict a person of an offence against an enforcement law on the basis that an ineffective order was a valid order, nothing in this item is to be taken to validate or confirm that conviction.

(4) In this item:

***enforcement law*** means a provision of a law of the Commonwealth, other than a law relating to contempt of court, that sets out a consequence for a person if the person:

(a) contravenes; or

(b) acts in a specified way while there is in force;

an order, or a particular kind of order, made by a court exercising federal jurisdiction (whether or not the provision also applies to other orders of courts).

## 12 Powers of courts in relation to declared rights and liabilities

(1) A court may vary, revoke, set aside, revive or suspend a right or liability conferred, imposed or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction as if it were a right or liability conferred, imposed or affected by an order made by that court of summary jurisdiction, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.



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(2) In addition to its powers under subitem (1), a court (the ***review court***) also has power to make an order achieving any other result that could have been achieved if:

(a) the ineffective order had been an order made by a court of summary jurisdiction, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order; and

(b) the review court had been considering whether:

(i) to vary, revoke, set aside, revive or suspend that order; or

(ii) to extend the time for the doing of anything in relation to the proceedings for the order; or

(iii) to grant a stay of the proceedings for the order.

## 13 Proceedings for contempt

If (whether before, at or after the commencement of this Part) a person has:

(a) interfered with a right conferred or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction; or

(b) failed to satisfy or comply with a liability imposed or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction;

the interference or failure is, and is taken always to have been, a matter that can be dealt with in the same manner as if the interference or failure had been in relation to a right conferred or affected, or a liability imposed or affected, by a valid judgment of that court.

## 14 Evidence

The court record, or a copy of the court record, of an ineffective order may be adduced in evidence to show the existence, nature and extent of each right or liability conferred, imposed or affected by item 9.

## 15 Part does not apply to certain orders

Nothing in this Part applies to an order declared to be invalid by a court before the commencement of this Part.



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## 16 Jurisdiction of courts

*Conferral of jurisdiction*

(1) Jurisdiction in matters arising under this Part is conferred on:

(a) the Family Court of Australia; and

(b) the Federal Magistrates Court.

Note: Sections 39 and 39B of the *Judiciary Act 1903* give State courts and the Federal Court of Australia jurisdiction in matters arising under this Part.

*Limitation of jurisdiction*

(2) A court has jurisdiction in a matter arising under this Part in relation to an ineffective order only if it had jurisdiction in the matter (the ***initial matter***) in connection with which the order was purportedly made. The court's jurisdiction in the matter arising under this Part is subject to the same conditions and limitations as would apply to it in dealing with the initial matter.

(3) Subitem (2) applies whether the court has jurisdiction in the matter arising under this Part because of subitem (1) or otherwise.

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*Judiciary Amendment Act 2008* (No. 71, 2008)

## Schedule 1

## 3 Application

The amendments of the *Judiciary Act 1903* made by this Schedule apply in relation to the recovery of amounts paid after the commencement of this Schedule.

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*Fair Work (State Referral and Consequential and Other Amendments) Act 2009* (No. 54, 2009)

### 4 Definition

In this Act:

***WR Act repeal day*** has the meaning given by Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

## Schedule 5

## 85 Application of item 38

(1) The amendment made by item 38 of this Schedule applies in relation to any matter in which a writ of mandamus or prohibition or an injunction is sought, on or after the WR Act repeal day, against an officer or officers of the Commonwealth in relation to a decision made (whether before or after that day) by the officer or officers in the capacity of a person who holds office under the *Fair Work Act 2009*.

(2) Despite the amendment made by item 38 of this Schedule, subsection 39B(2) of the *Judiciary Act 1903*, as in force immediately before the WR Act repeal day, continues to apply in relation to any matter in which a writ of mandamus or prohibition or an injunction is sought, on or after that day, against an officer or officers of the Commonwealth in relation to a decision made (whether before or after that day) by the officer or officers in the capacity of a person who holds office under the *Workplace Relations Act 1996*.



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