**Australian Capital Territory Supreme Court (No. 2)**

**No. 98 of 1971**

An Act relating to the Supreme Court of the Australian Capital Territory.

[*Assented to 17 November 1971*]

BE it enacted by the Queen’s Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

**Short title and citation.**

**1.**—(1.) This Act may be cited as the *Australian Capital Territory Supreme Court Act* (*No.* 2) 1971.

(2.) The *Australian Capital Territory Supreme Court Act* 1933–1969, as amended by the *Australian Capital Territory Supreme Court Act* 1971, is in this Act referred to as the Principal Act.

(3.) Section 1 of the *Australian Capital Territory Supreme Court Act* 1971 is amended by omitting sub-section (3.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Australian Capital Territory Supreme Court Act* 1933–1971.

**Commencement.**

**2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Amendment of title.**

**3.** The title of the Principal Act is amended by omitting the words “Territory for the Seat of Government” and inserting in their stead the words “Australian Capital Territory”.

**Definitions.**

**4.** Section 5 of the Principal Act is amended by inserting after the definition of “the Registrar” the following definition:—

“‘the senior Judge’ means the senior Judge appointed under sub-section (1.) of section seven of this Act who is available for the discharge of duties under this Act or, if there is no Judge appointed under that sub-section who is so available or there is no Judge holding office by virtue of an appointment under that sub-section, the senior additional Judge who is available for the discharge of duties under this Act;”.

**Establishment of Supreme Court.**

**5.** Section 6 of the Principal Act is amended by omitting from sub-section (3.) the word “two” and inserting in its stead the word “three”.

**Appointment and tenure of Judges and additional Judges.**

**6.**—(1.) Section 7 of the Principal Act is amended by adding at the end thereof the following sub-sections:—

“(4.) A Judge appointed under sub-section (1.) of this section ceases to hold office upon his attaining the age of seventy years.

“(5.) An additional Judge ceases to hold office if he no longer holds office as a Judge (other than an additional Judge) of another court created by the Parliament.

“(6.) A Judge may be removed from office by the Governor-General, on an address from both Houses of the Parliament in the same session praying for his removal on the ground of proved misbehaviour or incapacity, but shall not otherwise be removed from office.

“(7.) A Judge may, by writing under his hand delivered to the Governor-General, resign his office.”.

(2.) Subject to the next succeeding sub-section, sub-sections (4.) to (7.), inclusive, of section 7 of the Principal Act as amended by this Act apply in relation to Judges who were appointed before, or are appointed after, the commencement of this Act.

(3.) Sub-section (4.) of section 7 of the Principal Act as amended by this Act does not apply in relation to a Judge who held office immediately before the commencement of this Act and—

(*a*)also held that office on the eighth day of April, One thousand nine hundred and seventy-one; or

(*b*)held office on that day as a Judge of the Supreme Court of the Northern Territory of Australia.

**7.** Section 8 of the Principal Act is repealed and the following section inserted in its stead:—

**Exercise of jurisdiction.**

“8.—(1.) Subject to this section and the next two succeeding sections, the jurisdiction of the Supreme Court is exercisable by one Judge, sitting in Court, or, as provided by this Act, sitting in Chambers.

“(2.) The senior Judge may, from time to time, make arrangements as to which Judge is to exercise the jurisdiction of the Court that is exercisable in accordance with the last preceding sub-section.

“(3.) Provision may be made by Rules of Court for the jurisdiction of the Court that is exercisable in accordance with sub-section (1.) of this section to be exercisable by the Registrar in such cases, and subject to such conditions, as are specified in the Rules of Court and, for the purposes of the exercise of jurisdiction by the Registrar in such a case, this Act has effect, subject to this section, as if the Court consisted of the Judges and the Registrar.

“(4.) A person dissatisfied with an order made by the Registrar in the exercise of jurisdiction conferred upon him by Rules of Court in accordance with the last preceding sub-section may appeal, as prescribed by Rules of Court, to the Court constituted by one Judge.

“(5.) On an appeal under the last succeeding sub-section, the Court may affirm, vary or set aside the order of the Registrar and may make such order as in all the circumstances it thinks just.

“(6.) In this section, ‘the Registrar’ does not include a Deputy Registrar of the Supreme Court.”.

**Exercise of jurisdiction in relation to legal practitioners.**

**8.** Section 8aa of the Principal Act is amended—

(*a*) by omitting paragraph (*c*) of sub-section (1.) and inserting in its stead the following paragraph:—

“(*c*) any matter relating to the professional behaviour or conduct of a legal practitioner.”; and

(*b*)by omitting sub-sections (2.) to (5.), inclusive, and inserting in their stead the following sub-section:—

“(2.) The senior Judge may, from time to time, make arrangements as to which Judges are to exercise the jurisdiction of the Court that is exercisable in accordance with the last preceding sub-section.”.

**9.** After section 8aa of the Principal Act the following sections are inserted:—

**Power of Judge to order that jurisdiction in a matter be exercised by not less than three Judges.**

“8ab.—(1.) This section applies in relation to matters in which, but for this section, the jurisdiction of the Court would be exercisable by one Judge.

“(2.) At any time before the commencement of the hearing of a matter in relation to which this section applies, a Judge may order that the jurisdiction of the Supreme Court in that matter shall be exercised by not less than three Judges.

“(3.) At any time after the commencement of the hearing of a matter in relation to which this section applies, the Judge hearing the matter may order that the jurisdiction of the Supreme Court in that matter shall be exercised by not less than three Judges.

“(4.) Where an order has been made under either of the last two preceding sub-sections in relation to a matter—

(*a*) the jurisdiction of the Court in that matter shall, subject to the Rules of Court, be exercised by not less than three Judges sitting together in Court;

(*b*)the senior Judge shall make arrangements as to which Judges are to exercise the jurisdiction of the Court in that matter; and

(*c*)the Court may give such directions as it thinks proper as to the procedure to be followed in the further conduct of the proceedings, including, in a case where evidence was received before the making of the order, directions as to the use (if any) to be made of that evidence.

**Manner in which question to be decided where jurisdiction exercised by three or more Judges.**

“8ac. If three or more Judges sitting together in accordance with either of the last two preceding sections are divided in opinion as to the decision to be given on any question, the question shall be decided according to the opinion of the majority, if there is a majority, but if the Judges are equally divided in opinion—

(*a*)where a Judge appointed under sub-section (1.) of section seven of this Act is, or Judges appointed under that sub-section are, so sitting, the opinion of that Judge or of the senior of them, as the case may be, shall prevail; or

(*b*)where no such Judge is so sitting, the opinion of the senior additional Judge present shall prevail.”.

**References to Full Court of High Court.**

**10.** Section 13 of the Principal Act is amended by inserting after the words “section eight aa” the words “or section eight ab”.

**Rules of Court.**

**11.**—(1.) Section 28 of the Principal Act is amended—

(*a*)by omitting from sub-section (1.) the words “The Judge” and inserting in their stead the words “The Judges appointed under sub-section (1.) of section seven of this Act or any two of those Judges”;

(*b*)by omitting from sub-paragraph (ii) of paragraph (*a*)of sub-section (1.) the word “and” (last occurring);

(*c*)by omitting from paragraph (*b*)of sub-section (1.) the word “law.” and inserting in its stead the word “law;”;

(*d*)by adding at the end of sub-section (1.) the following paragraphs:—

“(*c*) for prescribing the qualifications for the admission of persons to practise as barristers and solicitors of the Supreme Court; and

(*d*)for prescribing any matter or thing that is, by this Act, required or permitted to be prescribed by Rules of Court.”;

(*e*)by inserting in paragraph (*b*)of sub-section (2.), after the word “served”, the words “and executed”; and

(*f*)by inserting after sub-section (4.) the following sub-section:—

“(4a.) Where—

(*a*)a rule is disallowed under this section; and

(*b*)the rule amended or revoked a rule that was in force immediately before the first-mentioned rule came into operation,

the disallowance revives the previous rule on and after the date of the disallowance.”.

(2.) Notwithstanding the amendments made by the last preceding sub-section, the Rules of Court in force under section 28 of the Principal Act immediately before the commencement of this Act continue in force but may be amended or revoked by Rules of Court made under section 28 of the Principal Act as amended by this Act.

**Registrar, Sheriff and other officers.**

**12.** Section 34 of the Principal Act is amended by inserting in sub-section (3.), after the words “Subject to”, the words “this Act and to”.

**13.** Sections 38 and 39 of the Principal Act are repealed and the following sections inserted in their stead:—

**Manner of giving evidence.**

“38. Except as otherwise provided by this Act or by an Ordinance, or unless in any suit the parties agree to the contrary, evidence in any matter shall be given orally in open court.

**Evidence by affidavit.**

“39.—(1.) On the hearing of any matter, evidence may be given by affidavit of the service of any document incidental to the proceedings in the matter or of the signature of a party to the matter, or of his solicitor, to such a document.

“(2.) On or before the hearing of a civil matter, the Court or a Judge may, for sufficient reason, order that all or a part of the evidence in the matter, being evidence that but for the order would be required to be given orally in open court, may be given by affidavit.

“(3.) An order under the last preceding sub-section may be made subject to such conditions as the Court or Judge thinks just.

“(4.) The conditions referred to in the last preceding sub-section may include a condition that copies of an affidavit by which any evidence is given be served on a party or parties to the matter and a condition that a person whose evidence is given by affidavit attend at the hearing for cross examination.”.

**Seal.**

**14.** Section 47 of the Principal Act is amended by inserting before the word “Judge” the word “senior”.

**Security of the peace and for good behaviour.**

**15.** Section 55 of the Principal Act is amended by omitting the words “The Judge of the Supreme Court” and inserting in their stead the words “A Judge, or, if three or more Judges are sitting together for the purpose of exercising jurisdiction of the Court that is exercisable by not less than three Judges, those Judges,”.