Federal Court of Australia Act 1976

No. 156, 1976

Compilation No. 51

Compilation date:	1 May 2016
Includes amendments up to:	Act No. 31, 2016
Registered:	2 May 2016

Prepared by the Office of Parliamentary Counsel, Canberra

Authorised Version C2016C00388 registered 02/05/2016

About this compilation

This compilation

This is a compilation of the *Federal Court of Australia Act 1976* that shows the text of the law as amended and in force on 1 May 2016 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part I—Preliminary 1

1 Short title 1
2 Commencement 1
3 Extension to Territories 1
4 Interpretation 1
4A Application of the *Criminal Code* 7

Part II—Federal Court of Australia 8

Division 1—Constitution of the Court 8

5 Creation of Court 8
6 Appointment, removal and resignation of Judges 8
6A Assignment of Judges to Divisions 10
7 Acting Chief Justice 10
8 Seniority 10
9 Salary and allowances of Judges 11
10 Appropriation 11
11 Oath or affirmation of office 11
12 Place of sitting 11
13 General and Fair Work Divisions of the Court 11
14 Manner in which Court may be constituted 13
15 Arrangement of business of Court 14
15A Consultation between Chief Justice and Chief Judge of Family Court 17
16 Court divided in opinion 17
17 Exercise of jurisdiction in open court and in Chambers 18
18 Powers of Court to extend to whole of Australia 18

Part IIA—Management of the Court 19

Division 1—Management responsibilities of Chief Justice and Registrar 19

18A Management of administrative affairs of Court 19
18B Registrar 19
18BA Arrangements with agencies or organisations 19

Division 1A—Application of the finance law 21

18BB Application of the finance law 21

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Appointment, powers etc. of Registrar 22
18C Appointment of Registrar 22
18D Powers of Registrar 22
18E Remuneration of Registrar 22
18F Terms and conditions of appointment of Registrar 23
18G Leave of absence 23
18H Resignation 23
18J Outside employment of Registrar 23
18K Termination of appointment 23
18L Disclosure of interests by Registrar 25
18M Acting Registrar 25
Division 3—Other officers and staff of Registries 26
18N Personnel other than the Registrar 26
18P Sheriff 27
18Q Statutory Agency etc. for purposes of Public Service Act 27
18R Engagement of consultants etc. 27
Division 4—Miscellaneous administrative matters 29
18S Annual report 29
18W Delegation of administrative powers of Chief Justice 29
18X Proceedings arising out of administration of Court 29
18XA Protection of persons involved in handling etc. complaints 29
18Y Oath or affirmation of office 30
Part III—Jurisdiction of the Court 31
Division 1—Original jurisdiction (general) 31
19 Original jurisdiction 31
20 Exercise of original jurisdiction 31
20A Power of the Court to deal with civil matters without an oral hearing 33
21 Declarations of right 34
22 Determination of matter completely and finally 34
23 Making of orders and issue of writs 34
Division 1A—Original jurisdiction (indictable offences) 35
Subdivision A—Introduction 35
23AA Background and simplified outline 35
23AB Application of Division 36
Subdivision B—Matters relating to indictments 37
23BA Indictment may include alternate counts 37

Authorised Version C2016C00388 registered 02/05/2016

23BB Single count can cover multiple accused 38
23BC Separating one or more accused from a single count 38
23BD Single indictment can include multiple counts 38
23BE Separating one or more counts from a single indictment 39
23BF Time within which indictments must be filed following committal order 39
23BG Consequences of not filing indictment within time 41
23BH Amending indictments 42

Subdivision C—Pre-trial matters (hearings, disclosure and quashing indictments) 42

23CA Pre-trial hearings 42
23CB Court may make orders during pre-trial hearings 43
23CC Matters that must be raised during pre-trial hearings 43
23CD Pre-trial and ongoing disclosure 44
23CE Disclosure of case for the prosecution 45
23CF Accused's response 46
23CG Prosecutor's response to accused's response 47
23CH Ongoing disclosure obligations 49
23CI Copies of things need not be provided if impracticable etc. 51
23CJ Personal details need not be provided 51
23CK Things need not be disclosed to a party more than once 52
23CL Effect on legal professional privilege and other privileges and duties etc. 52
23CM Consequences of disclosure requirements 54
23CN Restricting further disclosure of disclosed material 54
23CO Restricting admissibility of disclosed material as evidence in other proceedings 56
23CP Objecting to indictments 56
23CQ Examining witnesses after committal in absence of the jury 57

Subdivision D—Pre-trial matters (empanelling the jury) 58

23DA Simplified outline 58
23DB Application to criminal proceedings 59
23DC Number of jurors on jury 59
23DD Continuation of the trial with a reduced jury 59
23DE Ballot to reduce additional jurors 60
23DF Jury districts (establishment and boundaries) 60
23DG Jury roll for a jury district 60
23DH Qualification and liability for serving on jury 60

Authorised Version C2016C00388 registered 02/05/2016

23DI Disqualification from serving on jury (convictions, charges, detention orders etc.) 61
23DJ Disqualification from serving on jury (professional ineligibility) 64
23DK When Sheriff is to convene a jury panel 65
23DL Sheriff to select the jury district for the proceedings 65
23DM Sheriff to prepare the jury list for the proceedings 65
23DN Investigation and questionnaires 66
23DO Removing names from jury list 67
23DP Jury summonses 67
23DQ Sheriff's power to excuse—on application 68
23DR Sheriff's power to excuse—on own initiative 68
23DS Preparing the jury panel 69
23DT Preparing to empanel the jury 69
23DU Empanelling the jury 70
23DV Court's power to excuse a person from serving on jury 71
23DW Supplementary jurors 72
23DX Challenges to potential jurors—general 72
23DY Challenges for cause 73
23DZ Peremptory challenges 73
23DZA Prosecutor may request that potential jurors be stood aside 73

Subdivision E—Other jury matters 74

23EA Appointing the jury foreperson 74
23EB Confidentiality directions 74
23EC Things to help jury understand issues 75
23ED Recalling the jury for further directions or evidence 75
23EE When jury can separate 75
23EF Directions and potential jurors and jurors 75
23EG Sheriff's powers 76
23EH Jurors' remuneration 76
23EI Discharge of potential jurors 77
23EJ Discharge of jurors—by law 77
23EK Discharge of jurors—by the Court 77
23EL Discharge of jury 77
23EM Consequences of discharging the jury 78

Subdivision F—Matters relating to pleas, the trial and verdicts 80

23FA Accused to be arraigned before the jury 80
23FB Practice and procedure applicable to the trial 80
23FC Admissibility of evidence given in committal proceedings 80

Authorised Version C2016C00388 registered 02/05/2016

23FD Entering pleas 81
23FE Pleading to some counts in satisfaction of other counts 81
23FF Pleading to different offences capable of being supported by indictment 82
23FG Changing pleas 82
23FH Court's verdict if no case to answer 83
23FI Jury's verdict 83
23FJ Consequences of guilty pleas and guilty verdicts 84
23FK Consequences of not guilty verdicts 86

Subdivision G—Procedure on committal for sentencing 86
23GA When Subdivision applies 86
23GB Accused taken to have been committed for trial etc. 86

Subdivision H—Custodial and other matters 87
23HA Remanding in custody when proceedings adjourned 87
23HB Oaths and affirmations 87
23HC Protecting witnesses etc. 88
23HD Accused cannot make unsworn statements 88
23HE Costs 88

Division 2—Appellate and related jurisdiction (civil proceedings) 89
23P Appellate jurisdiction in civil proceedings 89
24 Appellate jurisdiction 89
25 Exercise of appellate jurisdiction 91
26 Cases stated and questions reserved 93
27 Evidence on appeal 94
28 Form of judgment on appeal 94
29 Stay of proceedings and suspension of orders 95
30 New trials 96

Division 2A—Appellate and related jurisdiction (criminal proceedings) 97

Subdivision A—Bringing appeals 97
30AA Appellate jurisdiction—allowable appeals 97
30AB Leave needed unless question of law or about bail 98
30AC Who may appeal 99
30AD Appellate jurisdiction—further appeal if Attorney-General consents 99
30AE Exercise of appellate jurisdiction 100
30AF Time for appealing 102

Authorised Version C2016C00388 registered 02/05/2016

30AG Right to attend 102
30AH Practice and procedure applicable to the appeal 103
30AI Evidence on appeal 103
30AJ When to allow appeals 104
30AK Stay or suspension of orders pending appeal 104
30AL Prison sentence not to include time on bail 105
Subdivision B—Form of judgment on appeal 105
30BA Court may give such judgment as is appropriate 105
30BB Allowing appeals against convictions on indictment 105
30BC Allowing appeals against sentence 107
30BD Allowing appeals for certain acquittals 107
30BE Allowing appeals involving unfitness, mental illness etc. 107
30BF Allowing appeals from summary proceedings 108
30BG Allowing appeals against bail, bail forfeiture or interim judgments and decisions (including about custody) 108
30BH Matters relevant to form of judgment on appeal 109
Subdivision C—References 109
30CA Cases stated and questions reserved 109
30CB Questions referred after trial 110
Subdivision D—Other 111
30DA Costs 111
Division 3—General 112
31 Contempt of Court 112
31A Summary judgment 112
31B Prerogative of mercy unaffected 113
32 Jurisdiction in associated matters 113
32AA Proceedings not to be instituted in the Court if an associated matter is before the Federal Circuit Court 114
32AB Discretionary transfer of civil proceedings to the Federal Circuit Court 114
32A State Supreme Courts invested with jurisdiction in Chambers 116
Part IV—Appeals to High Court 117
33 Appeals to High Court 117
Part IVA—Representative proceedings 119
Division 1—Preliminary 119
33A Interpretation 119
33B Application 119

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Commencement of representative proceeding 120
33C Commencement of proceeding ... 120
33D Standing ... 120
33E Is consent required to be a group member? ... 121
33F Persons under disability ... 121
33G Representative proceeding not to be commenced in certain circumstances ... 121
33H Originating process ... 122
33J Right of group member to opt out ... 122
33K Causes of action accruing after commencement of representative proceeding ... 123
33L Situation where fewer than 7 group members ... 123
33M Cost of distributing money etc. excessive ... 123
33N Order that proceeding not continue as representative proceeding where costs excessive etc. ... 124
33P Consequences of order that proceeding not continue under this Part ... 125
33Q Determination of issues where not all issues are common ... 125
33R Individual issues ... 126
33S Directions relating to commencement of further proceedings ... 126
33T Adequacy of representation ... 126
33U Stay of execution in certain circumstances ... 127
33V Settlement and discontinuance—representative proceeding ... 127
33W Settlement of individual claim of representative party ... 127
Division 3—Notices 129
33X Notice to be given of certain matters ... 129
33Y Notices—ancillary provisions ... 129
Division 4—Judgment etc. 131
33Z Judgment—powers of the Court ... 131
33ZA Constitution etc. of fund ... 132
33ZB Effect of judgment ... 133
Division 5—Appeals 134
33ZC Appeals to the Court ... 134
33ZD Appeals to the High Court—extended operation of sections 33ZC and 33ZF ... 135
Division 6—Miscellaneous 136
33ZE Suspension of limitation periods ... 136
33ZF General power of Court to make orders ... 136

Authorised Version C2016C00388 registered 02/05/2016

33ZG Saving of rights, powers etc. 136
33ZH Special provision relating to claims under Part VI of the *Competition and Consumer Act 2010* etc. 137
33ZJ Reimbursement of representative party's costs 137

Part V—Registries, officers and seal 139
34 Registries 139
35 Officers of Court 139
35A Powers of Registrars 139
36 Seal of Court 141
37 Writs etc. 142

Part VAA—Suppression and non-publication orders 143
Division 1—Preliminary 143
37AA Definitions 143
37AB Powers of the Court not affected 144
37AC Other laws not affected 144
37AD No limit on section 23HC 144
Division 2—Suppression and non-publication orders 145
37AE Safeguarding public interest in open justice 145
37AF Power to make orders 145
37AG Grounds for making an order 145
37AH Procedure for making an order 146
37AI Interim orders 147
37AJ Duration of orders 147
37AK Exception for court officials 147
37AL Contravention of order 148

Part VAAA—Vexatious proceedings 149
Division 1—Preliminary 149
37AM Definitions 149
37AN Powers of the Court not affected 150
Division 2—Vexatious proceedings orders 151
37AO Making vexatious proceedings orders 151
37AP Notification of vexatious proceedings orders 152
Division 3—Particular consequences of vexatious proceedings orders 153
37AQ Proceedings in contravention of vexatious proceedings order 153
37AR Application for leave to institute proceedings 154

Authorised Version C2016C00388 registered 02/05/2016

37AS Dismissing application for leave 154
37AT Granting application for leave 155

Part VA—Assessors 156

37A Appointment of assessors 156
37B Qualifications for appointment 156
37C Remuneration and allowances 156
37D Terms and conditions of appointment 157
37E Oath or affirmation of office 157
37F Leave of absence 157
37G Resignation 157
37H Termination of appointment—bankruptcy etc. 158
37I Termination of appointment—misbehaviour or incapacity 158
37J Suspension of assessors—misbehaviour or incapacity 159
37K Outside employment 160
37L Disclosure of interests 160

Part VB—Case management in civil proceedings 161

37M The overarching purpose of civil practice and procedure provisions 161
37N Parties to act consistently with the overarching purpose 161
37P Power of the Court to give directions about practice and procedure in a civil proceeding 162

Part VI—General 164

38 Practice and procedure 164
39 Civil trials to be without jury 164
40 Power of Court in civil proceedings to direct trial of issues with a jury 164
41 Juries in civil proceedings 165
43 Costs 165
44 Oaths and affirmations 167
45 Making of affidavits 167
46 Orders and commissions for examination of witnesses 168
47 Oral, video link, telephone and affidavit evidence 169
47A Testimony by video link, audio link or other appropriate means 170
47B Appearances or submissions by video link, audio link or other appropriate means 171
47C Conditions for use of video links, audio links or other appropriate means 172

Authorised Version C2016C00388 registered 02/05/2016

47D Putting documents to a person by video link, audio link or other appropriate means ... 174
47E Administration of oaths and affirmations ... 175
47F Expenses ... 175
47G New Zealand proceedings ... 176
48 Change of venue ... 176
49 Reserved judgments ... 176
51 Formal defects not to invalidate ... 176
51A Interest up to judgment ... 177
52 Interest on judgment ... 178
53 Enforcement of judgment ... 178
53A Arbitration, mediation and alternative dispute resolution processes ... 179
53AA Power of arbitrator to refer question of law to the Court ... 179
53AB Application to the Court for review of award on a question of law or for costs to be taxed ... 180
53B Admissions made to mediators ... 181
53C Protection of mediators and arbitrators ... 181
54 Arbitration awards ... 182
54A Referral of questions to a referee ... 182
54B Protection of referees ... 183
55 Actions by or against Sheriff ... 183
55A Making arrests under this Act or warrants ... 183
56 Security ... 185
57 Receivers ... 185
58 Offences by witness ... 186

Part VIA—Offences relating to juries 187

Division 1—Offences 187

58AA Failing to attend for jury service ... 187
58AB Failing to comply with directions—persons attending for jury service ... 187
58AC Failing to comply with directions—jurors ... 188
58AD Impersonating a juror or potential juror ... 189
58AE Failing to complete and return a questionnaire ... 189
58AF False or misleading information to avoid jury service ... 190
58AG Bribery of jurors or potential jurors ... 191
58AH Causing or threatening harm to jurors, potential jurors or former jurors ... 192
58AI Obstructing jurors or potential jurors ... 194

Authorised Version C2016C00388 registered 02/05/2016

58AJ Publishing or broadcasting information identifying jurors, potential jurors or former jurors 194
58AK Soliciting information from jurors 195
58AL Disclosing information about a jury 197
58AM Making improper inquiries as a juror or potential juror 199

Division 2—Infringement notices 201
58BA When an infringement notice can be given 201
58BB Matters to be included in an infringement notice 201
58BC Amount of penalty 202
58BD Withdrawal of an infringement notice 202
58BE What happens if the penalty is paid 203
58BF Effect of this Division on criminal proceedings 203
58BG Regulations 204

Part VIB—Bail 205

Division 1—Introduction 205
58CA Simplified outline 205

Division 2—Granting bail 206
58DA Applying for bail 206
58DB Granting bail 206
58DC Bail may be granted subject to conditions 207
58DD Bail to be stayed pending appeal 207
58DE Bail undertakings etc. 208
58DF Effect of granting bail 209
58DG Seeking discharge from undertaking to give security 209
58DH Dealings with property given as security for bail 210

Division 3—Reconsidering bail orders 211
58EA Reconsidering bail—discharge of security or accused fails to comply with the accused's bail undertaking 211
58EB Reconsidering bail—change in circumstances 211
58EC Consequences if bail is varied or revoked 212

Division 4—Further consequences if accused fails to appear in accordance with bail undertaking 213
58FA Offence for failing to appear before the Court 213
58FB Notice of proposed forfeiture 213
58FC Ordering forfeiture 214
58FD When forfeiture orders take effect 215
58FE Effect of forfeiture orders 215

Authorised Version C2016C00388 registered 02/05/2016

Division 5—When bail ends 218
58GA Continuing bail orders 218
58GB Bail discharged if the Court discharges the accused 218
58GC Continuing security undertakings when bail ends 218
58GD Returning security when bail ends 219
Division 6—Other matters 220
58HA Admissibility of certain matters 220
58HB Indemnifying a person providing security 221
Part VII—Rules of Court and regulations 222
59 Rules of Court 222
59A Regulations modifying or adapting the *Legislation Act 2003* 227
60 Regulations 228
The Schedule 229
Endnotes 230
Endnote 1—About the endnotes 230
Endnote 2—Abbreviation key 232
Endnote 3—Legislation history 233
Endnote 4—Amendment history 248
Endnote 5—Miscellaneous 266

Authorised Version C2016C00388 registered 02/05/2016

An Act to create a Federal Court of Australia and to make provision with respect to the Jurisdiction of that Court

Part I—Preliminary

1 Short title

This Act may be cited as the *Federal Court of Australia Act 1976.*

2 Commencement

(1) This Act shall come into operation on the day on which it receives the Royal Assent.

(2) No proceeding shall be instituted in the Court before a day to be fixed by Proclamation as the day on which the Court shall commence to exercise its jurisdiction.

3 Extension to Territories

This Act extends to every external Territory.

4 Interpretation

In this Act, unless the contrary intention appears:

accused:

(a) in relation to indictable primary proceedings—has the meaning given by subsection 23AB(1); and

(b) in relation to criminal appeal proceedings—means the person who was the accused in the proceedings appealed from.

alternative dispute resolution process means a procedure or service for the resolution of disputes (other than arbitration or

Authorised Version C2016C00388 registered 02/05/2016

mediation) not involving the exercise of the judicial power of the Commonwealth.

applicable jury district has the meaning given by section 23DL.

audio link means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

bail order means an order made under subsection 58DB(1).

bail undertaking means an undertaking under paragraph 58DE(1)(a).

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

civil practice and procedure provisions has the meaning given by subsection 37M(4).

commencing day means the day fixed under subsection 2(2).

complaint means a complaint mentioned in paragraph 15(1AA)(c).

complaint handler means:

(a) the Chief Justice; or

(b) a person who is authorised by the Chief Justice under subsection 15(1AAB); or

(c) a person who is a member of a body that is authorised by the Chief Justice under subsection 15(1AAB).

conveyance includes a vehicle, a vessel and an aircraft.

Court means the Federal Court of Australia established by this Act.

criminal appeal proceedings means:

(a) proceedings relating to an appeal referred to in section 30AA or 30AD; or

(b) proceedings relating to the seeking of leave to file such an appeal; or

Authorised Version C2016C00388 registered 02/05/2016

(c) proceedings in the Court that are ancillary to proceedings covered by paragraph (a) or (b).

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

Division means the General Division or the Fair Work Division of the Court.

dwelling house includes a conveyance, or a room in accommodation, in which people ordinarily retire for the night.

electoral Division has the same meaning as ***Division*** has in the *Commonwealth Electoral Act 1918*.

eligible primary court means:

(a) the Court constituted by a single Judge in indictable primary proceedings; or

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

(c) in such cases as are provided by any other Act, a court (other than a Full Court of the Supreme Court) of a State, the Australian Capital Territory or the Northern Territory, exercising federal jurisdiction.

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

Federal Circuit Court means the Federal Circuit Court of Australia.

foreign country includes a region where:

(a) the region is a colony, territory or protectorate of a foreign country; or

(b) the region is part of a foreign country; or

(c) the region is under the protection of a foreign country; or

Authorised Version C2016C00388 registered 02/05/2016

(d) a foreign country exercises jurisdiction or control over the region; or
(e) a foreign country is responsible for the region's international relations.

forfeiture order means an order made under subsection 58FC(1).

former juror means a person who has ceased to be a juror.

Full Court means a Full Court in a Division of the Court constituted in accordance with section 14.

Full Court of the Supreme Court of a State or Territory means the Supreme Court of the State or Territory when constituted by 2 or more judges, and includes the Supreme Court of the State or Territory when so constituted for the purpose of sitting as the Court of Appeal of the State or Territory.

handle a complaint means do one or more of the following acts relating to the complaint:
(a) consider the complaint;
(b) investigate the complaint;
(c) report on an investigation of the complaint;
(d) deal with a report of an investigation of the complaint;
(e) dispose of the complaint;
(f) refer the complaint to a person or body.

indictable offence matter has the meaning given by subsection 32(6).

indictable primary proceedings has the meaning given by subsection 23AB(2).

infringement notice means an infringement notice given under section 58BA.

Judge means a Judge of the Court (including the Chief Justice) and, in the expression "the Court or a Judge", means a Judge sitting in Chambers.

Authorised Version C2016C00388 registered 02/05/2016

judgment means:

(a) a judgment, decree or order, whether final or interlocutory; or

(b) a sentence;

and includes a conviction.

juror means a person serving as a juror in proceedings before the Court.

jury district means a jury district determined by the Sheriff under section 23DF.

jury service means service as a juror.

lawyer means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

overarching purpose (of the civil practice and procedure provisions) means the overarching purpose set out in subsection 37M(1).

party, in relation to indictable primary proceedings, has the meaning given by subsection 23AB(3).

police officer means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

potential juror means a person who:

(a) has been summonsed to attend for service as a juror in proceedings before the Court; and

(b) has not been empanelled as one of the jury; and

(c) has not been discharged from serving on the jury.

premises includes a place and a conveyance.

proceeding means a proceeding in a court, whether between parties or not, and includes an incidental proceeding in the course of, or in connexion with, a proceeding, and also includes an appeal.

Example: Discovery is an example of an incidental proceeding.

Authorised Version C2016C00388 registered 02/05/2016

referee means a person to whom a question is referred for inquiry and report under section 54A.

relevant belief: a person has a ***relevant belief*** in relation to a complaint about a Judge if:

(a) the person believes that one or more of the circumstances that gave rise to the complaint may, if substantiated, justify consideration of the removal of the Judge in accordance with paragraph 72(ii) of the Constitution; or

(b) the person believes that one or more of the circumstances that gave rise to the complaint may, if substantiated:

(i) adversely affect, or have adversely affected, the performance of judicial or official duties by the Judge; or

(ii) have the capacity to adversely affect, or have adversely affected, the reputation of the Court.

relevant to the accused's case: if an accused is prosecuted on indictment, evidence is ***relevant to the accused's case*** if it is capable of either or both of the following:

(a) undermining the prosecution's case;

(b) assisting the accused's case.

Roll has the same meaning as in the *Commonwealth Electoral Act 1918*.

sitting place, in relation to indictable primary proceedings, has the meaning given by subsection 23DK(2).

suit includes any civil action, or original civil proceeding, between parties.

third party security undertaking means an undertaking under paragraph 58DE(1)(b).

video link means facilities (for example, closed-circuit television facilities) that enable audio and visual communication between persons in different places.

Authorised Version C2016C00388 registered 02/05/2016

4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Authorised Version C2016C00388 registered 02/05/2016

Part II—Federal Court of Australia

Division 1—Constitution of the Court

5 Creation of Court

(1) A federal court, to be known as the Federal Court of Australia, is created by this Act.

(2) The Court is a superior court of record and is a court of law and equity.

(3) The Court consists of a Chief Justice, and such other Judges as from time to time hold office in accordance with this Act.

6 Appointment, removal and resignation of Judges

Appointment of Judges

(1) A Judge:
  (a) shall be appointed by the Governor-General by commission; and
  (b) shall not be removed except by the Governor-General, on an address from both Houses of the Parliament in the same session, praying for his or her removal on the ground of proved misbehaviour or incapacity.

(2) A person shall not be appointed as a Judge unless he or she is or has been a Judge of a prescribed court or of a court of a State or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years.

Judges to be assigned to particular location

(3) The commission of appointment of a Judge must assign the Judge to a particular location. The Judge:

Authorised Version C2016C00388 registered 02/05/2016

(a) must not sit at another location on a permanent basis unless the Attorney-General and the Chief Justice consent; and

(b) cannot be required to sit at another location on a permanent basis unless the Judge consents (in addition to the consents required by paragraph (a)); and

(c) may sit at another location on a temporary basis.

(3A) In deciding whether to consent as mentioned in paragraph (3)(a), the Chief Justice has the same protection and immunity as if he or she were making that decision as, or as a member of, the Court.

(3B) Despite section 39B of the *Judiciary Act 1903*, the Court does not have jurisdiction with respect to a matter relating to the exercise by the Attorney-General or the Chief Justice of the power to consent as mentioned in paragraph (3)(a).

Resignation

(4) A Judge may resign his or her office by writing under his or her hand delivered to the Governor-General, and the resignation takes effect on the day on which it is received by the Governor-General or on such later day as is specified in the writing.

Judge of 2 or more courts

(5) Notwithstanding anything contained in any other Act, a person may hold office at the one time as a Judge, other than the Chief Justice, of the Court and as a Judge of a prescribed court or of 2 or more prescribed courts.

Style

(6) A Judge or former Judge is entitled to be styled "The Honourable".

Definition

(7) In this section:

prescribed court means:

(a) a court (other than the Court) created by the Parliament; or

Authorised Version C2016C00388 registered 02/05/2016

(b) the Supreme Court of the Northern Territory; or
(c) the Supreme Court of the Australian Capital Territory; or
(d) the Supreme Court of a State.

6A Assignment of Judges to Divisions

The Governor-General may:

(a) assign a Judge (other than the Chief Justice) to one of the Divisions either:
  (i) in the commission of appointment of the Judge; or
  (ii) at a later time, with the consent of the Judge; and
(b) vary any such assignment, with the consent of the Judge.

Note: A Judge (including the Chief Justice) who is not assigned to either Division of the Court may exercise the powers of the Court in either Division (see subsection 15(1C)).

7 Acting Chief Justice

(1) Whenever:
  (a) the Chief Justice is absent from Australia or from duty; or
  (b) there is a vacancy in the office of Chief Justice;

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

(2) For the purposes of this Act, a person who is performing duties and exercising powers under subsection (1) is taken not to be assigned to either Division of the Court.

Note: A Judge (including the Chief Justice) who is not assigned to either Division of the Court may exercise the powers of the Court in either Division (see subsection 15(1C)).

8 Seniority

The Chief Justice is the senior Judge of the Court and the other Judges have seniority according to the dates on which their commissions took effect or, where the commissions of 2 or more of

Authorised Version C2016C00388 registered 02/05/2016

them took effect on the same date, according to the precedence assigned to them by their commissions.

9 Salary and allowances of Judges

(1) The Chief Justice and each other Judge shall, receive salary, annual allowances and travelling allowances at such respective rates as are fixed from time to time by the Parliament.

(2) The salary and annual allowance to which a Judge is entitled under this section accrue from day to day and are payable monthly.

(3) The remuneration of a Judge shall not be diminished during his or her continuance in office.

10 Appropriation

The Consolidated Revenue Fund is appropriated to the extent necessary for payment of salaries and allowances in accordance with section 9.

11 Oath or affirmation of office

A Judge shall, before proceeding to discharge the duties of his or her office, take before the Governor-General, another Judge of the Court, a Justice of the High Court or a Judge of the Supreme Court of a State or Territory an oath or affirmation in accordance with the form in the Schedule.

12 Place of sitting

Sittings of the Court shall be held from time to time as required at the places at which the registries of the Court are established, but the Court may sit at any place in Australia or in a Territory.

13 General and Fair Work Divisions of the Court

(1) For the purpose of the organisation and conduct of the business of the Court, the Court comprises 2 Divisions:

Authorised Version C2016C00388 registered 02/05/2016

(a) the General Division; and
(b) the Fair Work Division.

(2) Every proceeding in the Court must be instituted, heard and determined in a Division.

Fair Work Division

(3) The following jurisdiction of the Court is to be exercised in the Fair Work Division:
(a) jurisdiction that is required by any other Act to be exercised in the Fair Work Division;
(b) jurisdiction that is incidental to such jurisdiction.

Note: Under section 562 of the *Fair Work Act 2009*, jurisdiction is required to be exercised in the Fair Work Division of the Court in relation to matters arising under that Act.

General Division

(4) The following jurisdiction of the Court is to be exercised in the General Division:
(a) jurisdiction that is not required by any other Act to be exercised in the Fair Work Division;
(b) jurisdiction that is incidental to such jurisdiction (including jurisdiction that is required by any other Act to be exercised in the Fair Work Division).

Jurisdiction that is required to be exercised in both Divisions

(5) If the Court's jurisdiction is required to be exercised in both Divisions in relation to particular proceedings or proceedings of a particular kind, the Chief Justice may, at any time (whether before or after the proceedings are instituted), give a direction about the allocation to one or other Division of those proceedings or proceedings of that kind.

Authorised Version C2016C00388 registered 02/05/2016

14 Manner in which Court may be constituted

(1) For the purposes of the exercise of the jurisdiction of the Court, the Court may be constituted by a single Judge or as a Full Court.

(2) A Full Court consists of 3 or more Judges sitting together or, to the extent permitted by subsection (3), of 2 Judges sitting together.

(3) Where, after a Full Court (including a Full Court constituted in accordance with this subsection) has commenced the hearing, or further hearing, of a proceeding and before the proceeding has been determined, one of the Judges constituting the Full Court dies, resigns his or her office or otherwise becomes unable to continue as a member of the Full Court for the purposes of the proceeding, then the hearing and determination, or the determination, of the proceeding may be completed by a Full Court constituted by the remaining Judges, if at least 3 Judges remain or, if the remaining Judges are 2 in number and the parties consent, by a Full Court constituted by the remaining Judges.

(4) In the application of subsection (3) in relation to an appeal from a judgment of the Supreme Court of a Territory constituted by 2 or more Judges, the reference in that subsection to 3 Judges shall be read as a reference to 5 Judges and the reference in that subsection to Judges who are 2 in number shall be read as a reference to Judges who are 4 in number.

(5) A Full Court constituted in accordance with subsection (3) or (4) may have regard to any evidence given or received, and arguments adduced, by or before the Full Court as previously constituted.

(6) The Court constituted by one or more Judges may sit and exercise the jurisdiction of the Court notwithstanding that the Court constituted by one or more other Judges is at the same time sitting and exercising the jurisdiction of the Court.

Authorised Version C2016C00388 registered 02/05/2016

15 Arrangement of business of Court

Responsibility of Chief Justice

(1) The Chief Justice is responsible for ensuring the effective, orderly and expeditious discharge of the business of the Court.

(1AA) In discharging his or her responsibility under subsection (1) (and without limiting the generality of that subsection) the Chief Justice:

(a) may, subject to this Act and to such consultation with Judges as is appropriate and practicable, do all or any of the following:

(i) make arrangements as to the Judge or Judges who is or are to constitute the Court in particular matters or classes of matters;

(ii) without limiting the generality of subparagraph (i)—assign particular caseloads, classes of cases or functions to particular Judges;

(iii) temporarily restrict a Judge to non-sitting duties; and

(b) must ensure that arrangements are in place to provide Judges with appropriate access to (or reimbursement for the cost of):

(i) annual health assessments; and

(ii) short-term counselling services; and

(iii) judicial education; and

(c) may deal, as set out in subsection (1AAA), with a complaint about the performance by another Judge of his or her judicial or official duties; and

(d) may take any measures that the Chief Justice believes are reasonably necessary to maintain public confidence in the Court, including, but not limited to, temporarily restricting another Judge to non-sitting duties.

(1AAA) The Chief Justice may, if a complaint is made about another Judge, deal with the complaint by doing either or both of the following in respect of the complaint:

(a) deciding whether or not to handle the complaint and then doing one of the following:

Authorised Version C2016C00388 registered 02/05/2016

(i) dismissing the complaint;

(ii) handling the complaint if the Chief Justice has a relevant belief in relation to the complaint about the other Judge;

(iii) arranging for any other complaint handlers to assist the Chief Justice to handle the complaint if the Chief Justice has a relevant belief in relation to the complaint about the other Judge;

(b) arranging for any other complaint handlers to decide whether or not to handle the complaint and then to do one of the following:

(i) dismiss the complaint;

(ii) handle the complaint if each of the complaint handlers has a relevant belief in relation to the complaint about the other Judge.

Note: A complaint handler (other than the Chief Justice) may handle a complaint by referring it to the Chief Justice. The Chief Justice may then do either or both of the things referred to in paragraph (a) or (b) in respect of the complaint.

(1AAB) The Chief Justice may authorise, in writing, a person or a body to do one or more of the following:

(a) assist the Chief Justice to handle complaints or a specified complaint;

(b) decide whether or not to handle complaints or a specified complaint;

(c) dismiss complaints or a specified complaint;

(d) handle complaints or a specified complaint.

(1AB) In exercising the functions or powers mentioned in paragraph (1AA)(a), the Chief Justice has the same protection and immunity as if he or she were exercising those functions or powers as, or as a member of, the Court.

Note: See also section 18XA.

(1AC) Despite section 39B of the *Judiciary Act 1903*, the Court does not have jurisdiction with respect to a matter relating to the exercise by

Authorised Version C2016C00388 registered 02/05/2016

the Chief Justice of the functions or powers mentioned in subsection (1AA), (1AAA) or (1AAB).

Exercise of powers of General and Fair Work Divisions of the Court

(1A) A Judge who is assigned to a Division of the Court must exercise, or participate in exercising, the powers of the Court only in that Division, except as set out in subsection (1B).

(1B) The Chief Justice may arrange for a Judge who is assigned to a particular Division of the Court to exercise, or participate in exercising, the powers of the Court in the other Division if the Chief Justice considers that circumstances make it desirable to do so.

(1C) To avoid doubt, a Judge who is not assigned to either Division of the Court may exercise, or participate in exercising, the powers of the Court in either Division.

(1D) Subsection (1A) does not affect the validity of any exercise of powers by the Court otherwise than in accordance with that subsection.

Judges who are also Judges of the Supreme Court of the ACT and the Northern Territory

(2) Where a Judge of the Federal Court of Australia also holds office as an additional Judge of the Supreme Court of the Australian Capital Territory or of the Supreme Court of the Northern Territory of Australia, arrangements shall be made between the Chief Justice of the Federal Court of Australia and the Chief Judge or Chief Justice, as the case may be, of that Supreme Court as to the extent to which the Judge is to take part in the exercise of the jurisdiction of that Supreme Court, but the Chief Justice of the Federal Court of Australia shall consult with the Judge concerned before making any such arrangements.

Authorised Version C2016C00388 registered 02/05/2016

(3) Where a Judge, other than an additional Judge, of the Supreme Court of the Australian Capital Territory or of the Supreme Court of the Northern Territory of Australia also holds office as a Judge of the Federal Court of Australia, he or she is not required to take part in the exercise of the jurisdiction of the Federal Court of Australia except in accordance with arrangements made between the Chief Justice of the Federal Court of Australia and the Chief Judge or Chief Justice, as the case may be, of that Supreme Court, but the Chief Judge or Chief Justice, as the case may be, of that Supreme Court shall consult with the Judge concerned before making any such arrangements.

15A Consultation between Chief Justice and Chief Judge of Family Court

The Chief Justice and the Chief Judge of the Family Court of Australia may consult with each other in relation to the transfer of proceedings pending in the Court to the Family Court (whether generally or in relation to the transfer of particular proceedings).

16 Court divided in opinion

If the Judges constituting a Full Court for the purposes of any proceeding are divided in opinion as to the judgment to be pronounced, judgment shall be pronounced according to the opinion of the majority, if there is a majority, but, if the Judges are equally divided in opinion:

(a) in the case of an appeal from a judgment of the Court constituted by a single Judge, or of the Supreme Court of a State or Territory—the judgment appealed from shall be affirmed; and

(b) in any other case—the opinion of the Chief Justice or, if he or she is not a member of the Full Court, the opinion of the senior Judge who is a member of the Full Court, shall prevail.

Authorised Version C2016C00388 registered 02/05/2016

17 Exercise of jurisdiction in open court and in Chambers

(1) Except where, as authorized by this Act or another law of the Commonwealth, the jurisdiction of the Court is exercised by a Judge sitting in Chambers, the jurisdiction of the Court shall be exercised in open court.

(2) The jurisdiction of the Court may be exercised by a Judge sitting in Chambers in:

(a) a proceeding on an application relating to the conduct of a proceeding;

(b) a proceeding on an application for orders or directions as to any matter which, by this Act or any other law of the Commonwealth, is made subject to the direction of a Judge sitting in Chambers; and

(c) a proceeding on any other application authorized by the Rules of Court to be made to a Judge sitting in Chambers.

(3) A Judge may order a proceeding in Chambers to be adjourned into court.

(4) The Court may order the exclusion of the public or of persons specified by the Court from a sitting of the Court where the Court is satisfied that the presence of the public or of those persons, as the case may be, would be contrary to the interests of justice.

18 Powers of Court to extend to whole of Australia

The process of the Court runs, and the judgments of the Court have effect and may be executed, throughout Australia and the Territories.

Authorised Version C2016C00388 registered 02/05/2016

Part IIA—Management of the Court

Division 1—Management responsibilities of Chief Justice and Registrar

18A Management of administrative affairs of Court

(1) The Chief Justice is responsible for managing the administrative affairs of the Court.

(2) For that purpose, the Chief Justice has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:

(a) entering into contracts; and

(b) acquiring or disposing of personal property.

(3) The powers given to the Chief Justice by subsection (2) are in addition to any powers given to the Chief Justice by any other provision of this Act or by any other Act.

(4) Subsection (2) does not authorise the Chief Justice to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding $250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-General.

18B Registrar

In the management of the administrative affairs of the Court, the Chief Justice is assisted by the Registrar of the Court.

18BA Arrangements with agencies or organisations

(1) The Chief Justice may arrange with the chief executive officer (however described) of:

(a) an agency of the Commonwealth, a State or a Territory; or

Authorised Version C2016C00388 registered 02/05/2016

(b) another organisation;

for an employee or employees of the agency or organisation to:

(c) receive, on behalf of the Court, documents to be lodged with or filed in the Court; or

(d) perform, on behalf of the Court, other non-judicial functions of the Court.

(2) If an arrangement under subsection (1) is in force in relation to the performance by an employee of an agency or organisation of a function on behalf of the Court, the employee may perform that function despite any other provision of this Act or any other law of the Commonwealth.

(3) A function performed on behalf of the Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.

(4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.

Authorised Version C2016C00388 registered 02/05/2016

Division 1A—Application of the finance law

18BB Application of the finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

(a) the following group of persons is a listed entity:
  (i) the Registrar;
  (ii) the officers of the Court referred to in subsection 18N(1);
  (iii) the staff of the Registries referred to in subsection 18N(7);
  (iv) the Registrar of the National Native Title Tribunal;
  (v) the Deputy Registrars of the National Native Title Tribunal;
  (vi) the staff assisting the National Native Title Tribunal referred to in subsection 130(1) of the *Native Title Act 1993*;
  (vii) consultants engaged under section 132 of that Act; and

(b) the listed entity is to be known as the Federal Court of Australia; and

(c) the Registrar is the accountable authority of the listed entity; and

(d) the persons referred to in paragraph (a) are officials of the listed entity; and

(e) the purposes of the listed entity include the functions of the Registrar:
  (i) to assist the Chief Justice in the management of the administrative affairs of the Court (see section 18B of this Act); and
  (ii) to assist the President of the National Native Title Tribunal in the management of the administrative affairs of the Tribunal (see subsection 129(1) of the *Native Title Act 1993*).

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Appointment, powers etc. of Registrar

18C Appointment of Registrar

The Registrar is appointed by the Governor-General on the nomination of the Chief Justice.

18D Powers of Registrar

(1) The Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Justice under section 18B.

(2) In particular, the Registrar may act on behalf of the Chief Justice in relation to the administrative affairs of the Court.

(3) The Chief Justice may give the Registrar directions regarding the exercise of his or her powers under this Part.

18E Remuneration of Registrar

(1) The Registrar is to be paid the remuneration and allowances determined by the Remuneration Tribunal.

(2) If there is no determination in force, the Registrar is to be paid such remuneration as is prescribed.

(3) The Registrar is to be paid such other allowances as are prescribed.

(4) Remuneration and allowances payable to the Registrar under this section are to be paid out of money appropriated by the Parliament for the purposes of the Court.

Authorised Version C2016C00388 registered 02/05/2016

18F Terms and conditions of appointment of Registrar

(1) The Registrar holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.

(4) The Registrar holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Chief Justice.

18G Leave of absence

(1) The Registrar has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Chief Justice may grant the Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Justice, with the approval of the Attorney-General, determines.

18H Resignation

The Registrar may resign by giving a signed notice of resignation to the Governor-General.

18J Outside employment of Registrar

(1) Except with the consent of the Chief Justice, the Registrar must not engage in paid employment outside the duties of his or her office.

(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

18K Termination of appointment

(1) The Governor-General may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity.

(2) The Governor-General is required to terminate the appointment of the Registrar if the Registrar:

Authorised Version C2016C00388 registered 02/05/2016

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) engages in paid employment contrary to section 18J; or

(d) fails, without reasonable excuse, to comply with section 18L.

(3) The Governor-General may, with the consent of a Registrar who is:

(a) an eligible employee for the purposes of the *Superannuation Act 1976*; or

(b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or

(c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

retire the Registrar from office on the ground of incapacity.

(4) In spite of anything contained in this section, if the Registrar:

(a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and

(b) has not reached his or her maximum retiring age (within the meaning of that Act);

he or she is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.

(5) In spite of anything contained in this section, if the Registrar:

(a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(b) is under 60 years of age;

he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

Authorised Version C2016C00388 registered 02/05/2016

(6) In spite of anything contained in this section, if the Registrar:
   (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
   (b) is under 60 years of age;

he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

18L Disclosure of interests by Registrar

(1) The Registrar must give written notice to the Chief Justice of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or in any body corporate carrying on a business.

(2) The Registrar must give written notice to the Chief Justice of all material personal interests that the Registrar has that relate to the affairs of the Court.

(3) Section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) does not apply to the Registrar.

18M Acting Registrar

The Chief Justice may, in writing, appoint a person to act in the office of Registrar:
   (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
   (b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Authorised Version C2016C00388 registered 02/05/2016

Division 3—Other officers and staff of Registries

18N Personnel other than the Registrar

(1) In addition to the Registrar, there are the following officers of the Court:

(a) a District Registrar of the Court for each District Registry;

(b) such Deputy Registrars and Deputy District Registrars as are necessary;

(c) the Sheriff of the Court;

(d) such Deputy Sheriffs as are necessary;

(e) such Marshals for the purposes of the *Admiralty Act 1988* as are necessary.

(2) The officers of the Court, other than the Registrar, have such duties, powers and functions as are given to them by this Act or by the Chief Justice.

(3) The officers of the Court are appointed by the Registrar.

(4) The officers of the Court (other than the Registrar, the Deputy Sheriffs and the Marshals) are to be persons engaged under the *Public Service Act 1999*.

(5) The Deputy Sheriffs and the Marshals may be persons engaged under the *Public Service Act 1999*.

(6) The Registrar may, on behalf of the Chief Justice, arrange with an Agency Head within the meaning of the *Public Service Act 1999*, or with an authority of the Commonwealth, for the services of officers or employees of the Agency or authority to be made available for the purposes of the Court.

(7) There are to be such staff of the Registries as are necessary.

(8) The staff of the Registries is to consist of persons engaged under the *Public Service Act 1999*.

Authorised Version C2016C00388 registered 02/05/2016

18P Sheriff

(1) The Sheriff of the Court is responsible for the service and execution of all process of the Court (including warrants) directed to the Sheriff.

(2) The Sheriff is also responsible for:

(a) taking, receiving and detaining all persons committed to his or her custody by the Court; and

(b) discharging such persons when so directed by the Court or otherwise required by law.

(2A) The Sheriff is also responsible for matters under Division 1A of Part III directed to the Sheriff.

Note: These provisions of Part III are mainly about juries in criminal proceedings.

(3) A Deputy Sheriff may, subject to any directions of the Sheriff, exercise or perform any of the powers or functions of the Sheriff.

(4) The Sheriff or a Deputy Sheriff may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

18Q Statutory Agency etc. for purposes of Public Service Act

For the purposes of the *Public Service Act 1999*:

(a) the Registrar and the APS employees assisting the Registrar together constitute a Statutory Agency; and

(b) the Registrar is the Head of that Statutory Agency.

18R Engagement of consultants etc.

(1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar.

Authorised Version C2016C00388 registered 02/05/2016

(2) An engagement under subsection (1) is to be made:
  (a) on behalf of the Commonwealth; and
  (b) by written agreement.

Authorised Version C2016C00388 registered 02/05/2016

Division 4—Miscellaneous administrative matters

18S Annual report

(1) As soon as practicable after 30 June in each year, the Chief Justice must prepare a report of the management of the administrative affairs of the Court during the year.

Note: The report prepared by the Registrar and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* may be included in the report prepared under this section.

(2) A report prepared after 30 June in a year must be given to the Attorney-General by 15 October of that year.

(3) The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.

18W Delegation of administrative powers of Chief Justice

The Chief Justice may, in writing, delegate all or any of his or her powers under section 18A to any one or more of the Judges.

18X Proceedings arising out of administration of Court

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Court under this Part, including any proceeding relating to anything done by the Registrar under this Part, may be instituted by or against the Commonwealth, as the case requires.

18XA Protection of persons involved in handling etc. complaints

(1) In exercising powers or performing functions under paragraph 15(1AA)(c) and subsection 15(1AAA), or assisting in exercising those powers or performing those functions, a complaint handler has the same protection and immunity as a Justice of the High Court.

Authorised Version C2016C00388 registered 02/05/2016

(2) In authorising a person or body under subsection 15(1AAB), the Chief Justice has the same protection and immunity as a Justice of the High Court.

(3) A witness requested to attend, or appearing, before a complaint handler handling a complaint has the same protection, and is subject to the same liabilities in a proceeding, as a witness in a case tried by the High Court.

(4) A lawyer assisting, or appearing on behalf of a person before, a complaint handler handling a complaint has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

18Y Oath or affirmation of office

The Registrar, a District Registrar, a Deputy Registrar or a Deputy District Registrar shall, before proceeding to discharge the duties of the office, take, before the Chief Justice or a Judge of the Court, an oath or affirmation in the following form:

"I, , do swear that I will well and truly serve in the office of (*Registrar, District Registrar, Deputy Registrar or Deputy District Registrar*, as the case may be) of the Federal Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or illwill, So help me God."

or

"I, , do solemnly and sincerely promise and declare that" (*as above, omitting the words 'So help me God'*)."

Authorised Version C2016C00388 registered 02/05/2016

Part III—Jurisdiction of the Court

Division 1—Original jurisdiction (general)

19 Original jurisdiction

(1) The Court has such original jurisdiction as is vested in it by laws made by the Parliament.

(2) The original jurisdiction of the Court includes any jurisdiction vested in it to hear and determine appeals from decisions of persons, authorities or tribunals other than courts.

20 Exercise of original jurisdiction

(1) Except as otherwise provided by this Act or any other Act, the original jurisdiction of the Court shall be exercised by a single Judge.

(1A) If the Chief Justice considers that a matter coming before the Court in the original jurisdiction of the Court is of sufficient importance to justify the giving of a direction under this subsection, the Chief Justice may direct that the jurisdiction of the Court in that matter, or a specified part of that matter, shall be exercised by a Full Court.

(1B) Subsection (1A) does not apply in relation to indictable primary proceedings.

(2) The jurisdiction of the Court in a matter coming before the Court from a tribunal or authority (other than a court) while constituted by, or by members who include, a person who is a Judge of the Court or of another court created by the Parliament shall be exercised by a Full Court.

(2A) Subsections (1A) and (2) have effect subject to subsections (3) and (5).

Authorised Version C2016C00388 registered 02/05/2016

(3) Applications:

(a) for leave or special leave to institute proceedings in the Court; or

(b) for an extension of time within which to institute proceedings in the Court; or

(c) for leave to amend the grounds of an application or appeal to the Court; or

(d) to stay a decision of the tribunal or authority mentioned in subsection (2);

must be heard and determined by a single Judge unless:

(e) a Judge directs that the application be heard and determined by a Full Court; or

(f) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.

(4) The Rules of Court may make provision enabling applications of the kind mentioned in subsection (3) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing either with or without the consent of the parties.

(5) In a matter coming before the Court as mentioned in subsection (1A) or (2), a single Judge (sitting in Chambers or in open court) or a Full Court may:

(a) join or remove a party; or

(aa) make an interlocutory order pending, or after, the determination of the matter by a Full Court; or

(b) make an order (including an order for costs) by consent disposing of the matter; or

(c) make an order that the matter be dismissed for want of prosecution; or

(d) make an order that the matter be dismissed for:

(i) failure to comply with a direction of the Court; or

(ii) failure of the applicant to attend a hearing relating to the matter; or

(da) vary or set aside an order under paragraph (aa), (c) or (d); or

Authorised Version C2016C00388 registered 02/05/2016

(db) in relation to a civil matter, give directions under subsection 37P(2); or

(e) give other directions about the conduct of the matter, including directions about:

(i) the use of written submissions; and

(ii) limiting the time for oral argument.

(5A) An application for the exercise of a power mentioned in subsection (5) must be heard and determined by a single Judge unless:

(a) a Judge directs that the application be heard and determined by a Full Court; or

(b) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.

(6) The Rules of Court may make provision enabling the powers in subsection (5) to be exercised, subject to conditions prescribed by the Rules, without an oral hearing either with or without the consent of the parties.

20A Power of the Court to deal with civil matters without an oral hearing

(1) This section applies in relation to any civil matter coming before the Court in the original jurisdiction of the Court.

(2) The Court or a Judge may deal with the matter without an oral hearing (either with or without the consent of the parties) if satisfied that:

(a) the matter is frivolous or vexatious; or

(b) the issue or issues on which determination of the matter depends have been decided authoritatively in the case law; or

(c) determination of the matter would not be significantly aided by an oral hearing because:

(i) there is no real issue of fact relevant to determination of the matter; and

Authorised Version C2016C00388 registered 02/05/2016

(ii) the legal arguments in relation to the matter can be dealt with adequately by written submissions.

(3) This section does not limit subsections 20(4) and (6).

21 Declarations of right

(1) The Court may, in civil proceedings in relation to a matter in which it has original jurisdiction, make binding declarations of right, whether or not any consequential relief is or could be claimed.

(2) A suit is not open to objection on the ground that a declaratory order only is sought.

22 Determination of matter completely and finally

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

23 Making of orders and issue of writs

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

Authorised Version C2016C00388 registered 02/05/2016

Division 1A—Original jurisdiction (indictable offences)

Subdivision A—Introduction

23AA Background and simplified outline

The following is background to, and a simplified outline of, this Division:

- This Division sets out procedures to be followed during criminal proceedings in the Court relating to certain indictable offences.
- This Division does not confer jurisdiction on the Court in relation to indictable offences. Other provisions need to have done this.
- This Division does not set out all of the procedures to be followed during these criminal proceedings. It is supplemented by procedures set out in the Rules of Court, and also by procedures set out in:

    (a) State and Territory laws; and

    (b) Rules of Court of State and Territory courts;

  as applied by sections 68, 68B and 68C of the *Judiciary Act 1903*.
- The procedures set out in this Division include procedures about the following:

    (a) preparing, amending and filing indictments;

    (b) pre-trial hearings and disclosure;

Authorised Version C2016C00388 registered 02/05/2016

(c) empanelling and discharging juries;

(d) pleas and verdicts;

(e) persons committed to the Court for sentencing.

23AB Application of Division

Events causing Division to apply, and meaning of key concepts

(1) This Division applies in relation to a person (the ***accused***) if any of the following events happen:

(a) either the accused, the prosecutor or both appear before the Court in accordance with an order committing the accused for trial on indictment, or sentencing, before the Court for an indictable offence;

(b) the prosecutor files in the Court an indictment against the accused for an indictable offence (whether or not the accused has been examined and committed for trial on indictment);

(c) the prosecutor applies to the Court for an extension of time in which to file in the Court an indictment of the kind covered by paragraph (b) against the accused;

(d) the accused applies to the Court in relation to the prosecutor's failure to file an indictment against the accused in response to an order committing the accused for trial on indictment before the Court for an indictable offence;

(e) either the accused, the prosecutor or both appear before the Court in accordance with an order of a State or Territory court granting the accused bail in relation to an indictable offence.

Indictable primary proceedings

(2) This Division applies in relation to the following proceedings (the ***indictable primary proceedings***):

(a) proceedings in the Court that are commenced by, or that include, an event mentioned in subsection (1);

Authorised Version C2016C00388 registered 02/05/2016

(b) proceedings in the Court for sentencing the accused if the Court, in proceedings covered by paragraph (a), has accepted a plea of guilty, or a verdict of guilty, for a count in the indictment in relation to the accused;

(c) proceedings in the Court that are ancillary to proceedings covered by paragraph (a) or (b).

Parties to the proceedings

(3) In indictable primary proceedings, the accused and the prosecutor are ***parties*** to the proceedings.

Note: More than one accused may be a party to the proceedings if they are prosecuted on a single indictment (see sections 23BB and 23BD).

Offences to which this Division applies

(4) A reference in this Division to an offence is a reference to any of the following:

(a) an offence against either of the following sections of the *Competition and Consumer Act 2010*:

(i) section 44ZZRF (making a contract etc. containing a cartel provision);

(ii) section 44ZZRG (giving effect to a cartel provision);

(b) if jurisdiction is conferred on the Court under subsection 32(4) in respect of a matter—an indictable offence to which the matter relates.

Note: Paragraph (b) covers any Commonwealth indictable offence associated with a particular prosecution of a cartel offence mentioned in paragraph (a).

Subdivision B—Matters relating to indictments

23BA Indictment may include alternate counts

The prosecutor may include alternate counts in an indictment.

Authorised Version C2016C00388 registered 02/05/2016

23BB Single count can cover multiple accused

The prosecutor may, in an indictment, include a single count against more than one accused for the same indictable offence if the count is founded on alleged facts that are the same or substantially the same for each accused.

23BC Separating one or more accused from a single count

(1) The Court may order one or more accused included in a single count in an indictment to be tried separately:

(a) in the same proceedings on a different count in the same indictment; or

(b) in separate proceedings on one or more further indictments;

if the Court is satisfied that it is expedient to do so in the interests of justice.

(2) If the Court makes an order under subsection (1), the Court may make such other orders as it thinks appropriate in the circumstances.

(3) The Court may make an order under subsection (1) before trial or during the trial.

23BD Single indictment can include multiple counts

Single accused

(1) The prosecutor may, in a single indictment, include counts against the accused for more than one indictable offence if those counts:

(a) are founded on alleged facts that are the same or substantially the same; or

(b) are, or form part of, a series of alleged indictable offences:

(i) of the same or a similar character; or

(ii) committed in the pursuit of a single purpose.

Authorised Version C2016C00388 registered 02/05/2016

Multiple accused

(2) The prosecutor may, in a single indictment, include counts against more than one accused for the same or different indictable offences if those counts:

(a) are founded on alleged facts that are the same or substantially the same; or

(b) are, or form part of, a series of alleged indictable offences:

(i) of the same or a similar character; or

(ii) committed in the pursuit of a single purpose.

23BE Separating one or more counts from a single indictment

(1) The Court may order one or more counts in an indictment to be tried separately:

(a) in separate proceedings; and

(b) on one or more further indictments;

if the Court is satisfied that it is expedient to do so in the interests of justice.

(2) If the Court makes an order under subsection (1), the Court may make such other orders as it thinks appropriate in the circumstances.

(3) The Court may make an order under subsection (1) before trial or during the trial.

23BF Time within which indictments must be filed following committal order

Scope

(1) This section applies if the accused is committed for trial before the Court for an indictable offence.

Authorised Version C2016C00388 registered 02/05/2016

General rule—indictments must be filed within 3 months

(2) An indictment may only include a count that covers the offence if the indictment is filed in the Court as soon as practicable, and in any event within 3 months, after the committal order is made.

Extension—if accused/count separated from earlier indictment

(3) Subsection (2) does not prevent the inclusion of a count in an indictment if:
  (a) the count contains the same offence, in relation to the accused, as an earlier count from which the accused was separated by an order under subsection 23BC(1); and
  (b) the indictment is filed within 3 months after:
    (i) if the Court accepts a plea of guilty, or a verdict of guilty, in relation to the earlier count and any of the other accused remaining covered by that count—the end of sentencing proceedings relating to that count; or
    (ii) otherwise—the end of the trial of those other accused remaining covered by the earlier count.

(4) Subsection (2) does not prevent the inclusion of a count in an indictment if:
  (a) the count is the same as another count relating to the accused that was separated from an earlier indictment by an order under subsection 23BE(1); and
  (b) the first-mentioned indictment is filed within 3 months after:
    (i) if the Court accepts a plea of guilty, or a verdict of guilty, in relation to any of the counts remaining in the earlier indictment—the end of sentencing proceedings relating to those counts; or
    (ii) otherwise—the end of the trial relating to the counts remaining in the earlier indictment.

(5) The Court may order that subsection (3) or (4) does not apply in relation to an indictment, and may make such other orders about the time within which the indictment must be filed as the Court thinks appropriate in the circumstances.

Authorised Version C2016C00388 registered 02/05/2016

Extension—by court order

(6) On application by the prosecutor, the Court may, by order, extend (or further extend) the time by which, under subsection (2), (3), (4) or (5), an indictment is required to be filed.

(7) The Court may exercise its power under subsection (6) only if the application for the extension (or further extension) is made before the end of the period to be extended (or further extended).

No effect on filing indictments in other courts

(8) This section does not prevent an indictment of the accused for the indictable offence being filed in another court that has jurisdiction in relation to the offence.

23BG Consequences of not filing indictment within time

(1) If the accused is committed for trial before the Court for an indictable offence and an indictment is not filed in the Court within the time required by section 23BF, the Court may:
  (a) discharge the accused; and
  (b) make such other orders as it thinks appropriate in the circumstances.

(2) Subsection (1) has effect subject to subsections (3) and (4).

(3) The Court must not:
  (a) proceed with the trial as if an indictment had been filed in the Court; or
  (b) acquit the accused of the offence.

(4) Subsection (1) does not apply if an indictment of the accused for the indictable offence is filed in another court that has jurisdiction in relation to the offence.

Authorised Version C2016C00388 registered 02/05/2016

23BH Amending indictments

(1) The prosecutor may, in accordance with the Rules of Court, amend or replace an indictment in relation to an accused at any time when:
  (a) no date has been set for the start of the trial of the accused on the indictment; or
  (b) the 90 day period ending on the date set for the start of the trial of the accused on the indictment has not started.

Note: A trial starts when the accused is arraigned before a jury (see subsection 23FA(2)).

(2) If the 90 day period ending on the date set for the start of the trial has started, or the trial has started, the prosecutor may only amend or replace the indictment with the leave of the Court.

(3) If the prosecutor replaces an indictment under subsection (1) or (2), the Court must dismiss the replaced indictment.

(4) If an indictment is amended or replaced, the Court may make such orders as it thinks appropriate in the circumstances.

Note: If, for example, an indictment was amended to remove a count against the accused, the Court could discharge the accused in relation to that count.

(5) This section does not affect the amendment of an indictment under other provisions of this Division.

Subdivision C—Pre-trial matters (hearings, disclosure and quashing indictments)

23CA Pre-trial hearings

If the Court notifies the prosecutor and the accused in writing of a pre-trial hearing in relation to an indictment filed in the Court:
  (a) the prosecutor and the accused must attend the pre-trial hearing; and
  (b) the accused must enter a plea to each count in the indictment that relates to the accused (unless the accused has already done so in a previous pre-trial hearing).

Authorised Version C2016C00388 registered 02/05/2016

Note: The Court may also order pre-trial disclosure (see subsection 23CD(1)).

23CB Court may make orders during pre-trial hearings

(1) During a pre-trial hearing, the Court may make orders and determinations for the efficient management and disposal of a trial on the indictment.

(2) Without limiting subsection (1), the Court may do any or all of the following under that subsection:

(a) make orders, or give leave, under Subdivision B (matters relating to indictments);

(b) hear and determine an objection to the indictment;

(c) make an order under subsection 23CD(1) (pre-trial disclosure);

(d) determine the admissibility of evidence;

(e) hear and determine a submission that the matter should not proceed to trial for a reason not mentioned in a preceding paragraph of this subsection;

(f) rule on a matter of law that may arise during a trial on the indictment.

Note 1: The Court could, for example, rule whether business records are admissible.

Note 2: For the purposes of paragraph (2)(b), the bases on which the accused may object to an indictment are set out in subsection 23CP(1).

(3) If a trial on the indictment starts, an order or determination under subsection (1) applies for the trial unless the Court is satisfied that to follow the order or determination would be contrary to the interests of justice.

23CC Matters that must be raised during pre-trial hearings

If a matter covered by paragraph 23CB(2)(b) or (e) was not raised during the pre-trial hearings for an indictment, the matter cannot be raised during the trial unless the Court is satisfied that to not do so would be contrary to the interests of justice.

Authorised Version C2016C00388 registered 02/05/2016

23CD Pre-trial and ongoing disclosure

(1) After the indictment is filed in the Court and before a trial on the indictment starts, the Court may order:

(a) the prosecutor to give the accused notice of the case for the prosecution in accordance with section 23CE; and

(b) the accused, after having been given notice of the case for the prosecution, to give the prosecutor notice of the accused's response in accordance with section 23CF; and

(c) the prosecutor, after having been given notice of the accused's response, to give the accused notice of the prosecution's response to the accused's response in accordance with section 23CG; and

(d) the prosecutor and the accused to make ongoing disclosures in accordance with section 23CH until, for each count in the indictment relating to the accused, the accused is either:

(i) convicted of the offence covered by the count; or

(ii) discharged in relation to the count.

The order may specify the time within which each disclosure is to be made.

(2) The accused must give the following to the prosecutor as soon as practicable after the accused's first pre-trial hearing before the Court in relation to the indictment:

(a) if at the trial the accused proposes to adduce supporting evidence of an alibi—notice of particulars, prepared in accordance with the Rules of Court, of that alibi;

(b) if at the trial the accused proposes to adduce supporting evidence that the accused was suffering from a mental impairment (within the meaning of section 7.3 of the *Criminal Code*)—notice of particulars, prepared in accordance with the Rules of Court, of that impairment.

Note: A party may also be required to disclose additional information as a result of other laws (for example, subsection 44ZZRO(2) of the *Competition and Consumer Act 2010*).

Authorised Version C2016C00388 registered 02/05/2016

23CE Disclosure of case for the prosecution

The notice of the prosecution's case must include the following:

(a) an outline of the prosecution's case that sets out the facts, matters and circumstances on which the prosecution's case is based;

(b) for each witness the prosecutor proposes to call at the trial:

(i) a copy of a signed statement by the witness that sets out the evidence the witness is to give at the trial; or

(ii) if the prosecutor cannot obtain such a signed statement—a written summary of the evidence the witness is to give at the trial;

(c) for each witness:

(i) the prosecutor does not propose to call at the trial; but

(ii) who has signed a statement that sets out the evidence the witness could give at the trial;

a copy of the signed statement;

(d) copies of any documents the prosecutor proposes to tender at the trial;

(e) copies of, or an invitation to inspect, any other exhibits the prosecutor proposes to tender at the trial;

(f) a copy of any report, relevant to the trial, that has been prepared by an expert witness whom the prosecutor proposes to call at the trial;

(g) a copy or details of any information in the prosecutor's possession that might adversely affect the reliability or credibility of a prosecution witness;

(h) a copy or details of any information, document or other thing in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case;

(i) if the prosecutor reasonably believes information in the prosecutor's possession suggests the existence of evidence that may be relevant to the accused's case—a copy or details of so much of that information as is necessary to suggest that existence;

Authorised Version C2016C00388 registered 02/05/2016

(j) a list identifying:
  (i) any information, document or other thing not in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case; and
  (ii) for each item of information, and each document or other thing, a place where the prosecutor reasonably believes the item, document or thing to be;

(k) a copy or details of any information, document or other thing in the prosecutor's possession that is adverse to the accused's credit or credibility;

and may include other matters.

Note: Information and things do not need to be disclosed more than once (see section 23CK).

23CF Accused's response

(1) The notice of the accused's response to the notice of the prosecution's case must include the following:

(a) a statement setting out, for each fact set out in the notice of the prosecution's case:
  (i) that the accused agrees that the fact is to be an agreed fact for the purposes of section 191 of the *Evidence Act 1995* at the trial; or
  (ii) that the accused takes issue with the fact;

and, if the accused takes issue with the fact, the general basis for taking issue;

(b) a statement setting out, for each matter and circumstance set out in the notice of the prosecution's case:
  (i) whether the accused takes issue with the matter or circumstance; and
  (ii) if the accused does take issue—the general basis for taking issue;

(c) notice as to whether any statement by a person given under subparagraph 23CE(b)(i) can be tendered at the trial without the person being called as a witness at the trial;

Authorised Version C2016C00388 registered 02/05/2016

(d) notice as to whether the accused requires the prosecutor to call witnesses to corroborate any specified surveillance evidence that was notified to the accused by the prosecutor under section 23CE;

(e) notice as to whether the accused requires the prosecutor to prove:

(i) the continuity of handling of any specified exhibits; or

(ii) the accuracy of any specified exhibits that are transcripts, summaries or charts;

that were notified to the accused by the prosecutor under section 23CE;

(f) in relation to each report given under paragraph 23CE(f), notice as to:

(i) whether the accused accepts or contests the opinions expressed in the report; and

(ii) whether the report can be tendered at trial without the expert being called as a witness at the trial;

(g) any consent that the accused gives under section 190 of the *Evidence Act 1995* in relation to:

(i) any evidence notified under section 23CE as evidence proposed to be adduced by the prosecutor; or

(ii) any other evidence relating to the trial;

(h) any consent that the accused gives under section 184 of the *Evidence Act 1995* in relation to the trial;

(k) a copy of any report, relevant to the trial, that has been prepared by an expert witness whom the accused proposes to call at the trial;

and may include other matters.

(2) Paragraph (1)(a) and subparagraph (1)(b)(ii) do not require the accused to disclose details of the accused's proposed defence.

23CG Prosecutor's response to accused's response

The notice of the prosecution's response to matters contained in the accused's response must include the following:

Authorised Version C2016C00388 registered 02/05/2016

(a) notice as to whether the prosecutor requires the accused to prove:
  (i) the continuity of handling of any specified exhibits; or
  (ii) the accuracy of any specified exhibits that are transcripts, summaries or charts;
that were notified to the prosecutor by the accused under section 23CF;

(b) in relation to each report given under paragraph 23CF(1)(k), notice as to:
  (i) whether the prosecutor accepts or contests the opinions expressed in the report; and
  (ii) whether the report can be tendered at trial without the expert being called as a witness at the trial;

(c) any consent that the prosecutor gives under section 190 of the *Evidence Act 1995* in relation to:
  (i) any evidence notified under section 23CF as evidence proposed to be adduced by the accused; or
  (ii) any other evidence relating to the trial;

(d) notice of any fact that the prosecutor agrees to as an agreed fact for the purposes of section 191 of the *Evidence Act 1995* at the trial;

(e) a copy or details of any additional information, document or other thing in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case;

(f) if the prosecutor reasonably believes additional information in the prosecutor's possession suggests the existence of evidence that may be relevant to the accused's case—a copy or details of so much of that information as is necessary to suggest that existence;

(g) a list identifying:
  (i) any additional information, document or other thing not in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case; and

Authorised Version C2016C00388 registered 02/05/2016

(ii) for each item of information, and each document or other thing, a place where the prosecutor reasonably believes the item, document or thing to be;

and may include other matters.

Note: Information and things do not need to be disclosed more than once (see section 23CK).

23CH Ongoing disclosure obligations

(1) If the Court makes an order under subsection 23CD(1) requiring ongoing disclosure in accordance with this section:

(a) the accused's ongoing disclosure obligations are set out in subsection (2); and

(b) the prosecutor's ongoing disclosure obligations are set out in subsections (4) and (5).

Accused's ongoing disclosure obligations

(2) If, contrary (or in addition) to the accused's response under section 23CF, the accused later:

(a) no longer takes issue with, or no longer contests, something set out in the notice of the prosecution's case; or

(b) takes issue with something set out in the notice of the prosecution's case on an alternate or additional basis to the basis set out in the accused's response; or

(c) no longer requires the prosecution to do something, or to ensure that something is done; or

(d) agrees or accepts, or consents to, something set out in the notice of the prosecution's case; or

(e) obtains a report, relevant to the trial, that has been prepared by an expert witness whom the accused proposes to call at the trial;

the accused must notify this to the prosecutor. When giving notice of a report by an expert witness, the accused must include a copy of the report.

Note: The order may specify the time within which the accused must notify this to the prosecutor (see section 23CD).

Authorised Version C2016C00388 registered 02/05/2016

Prosecution's ongoing disclosure obligations

(4) If, contrary (or in addition) to the prosecution's response under section 23CG, the prosecutor later:

(a) no longer contests something set out in the accused's response; or

(b) no longer requires the accused to do something, or to ensure that something is done; or

(c) agrees or accepts, or consents to, something set out in the accused's response; or

(d) obtains a report, relevant to the trial, that has been prepared by an expert witness whom the prosecution proposes to call at the trial;

the prosecutor must notify this to the accused as soon as practicable. When giving notice of a report by an expert witness, the prosecutor must include a copy of the report.

Note: The order may specify the time within which the prosecutor must notify this to the accused (see section 23CD).

(5) After giving the prosecution's response under section 23CG, the prosecutor must give the accused:

(a) a copy or details of any additional information, document or other thing in the prosecutor's possession that the prosecutor reasonably believes contains evidence that may be relevant to the accused's case; and

(b) if the prosecutor reasonably believes information in the prosecutor's possession suggests the existence of evidence that may be relevant to the accused's case—a copy or details of so much of that information as is necessary to suggest that existence; and

(c) if the prosecutor reasonably believes any information, document or other thing not in the prosecutor's possession contains evidence that may be relevant to the accused's case—a statement to that effect identifying:

(i) the information, document or thing; and

(ii) a place where the prosecutor reasonably believes the information, document or thing to be.

Authorised Version C2016C00388 registered 02/05/2016

Note 1: Information and things do not need to be disclosed more than once (see section 23CK).

Note 2: The order may specify the time within which the prosecutor must give these things to the accused (see section 23CD).

23CI Copies of things need not be provided if impracticable etc.

(1) Nothing in this Subdivision requires a copy or details of any information, document or other thing to be given if it is unlawful, impossible or impracticable to provide the copy or details.

(2) However, the party to the proceedings required (but for subsection (1)) to give the copy or details must:
  (a) notify the other party of a reasonable time and place at which the information, document or other thing may be inspected; and
  (b) allow the other party a reasonable opportunity to inspect the information, document or other thing.

23CJ Personal details need not be provided

(1) Nothing in this Subdivision requires the prosecutor to disclose the address or telephone number of any witness proposed to be called by the prosecutor, or of any other living person, unless:
  (a) the address or telephone number is a materially relevant part of the evidence; or
  (b) on application by the accused—the Court makes an order directing the disclosure.

Note: The Court may make orders to protect witnesses, information, documents and other things (see section 23HC).

(2) The Court must not make an order under paragraph (1)(b) directing the disclosure of information unless it is satisfied that:
  (a) the accused needs the information to prepare properly for the hearing of the evidence for the prosecution; and
  (b) if the disclosure is likely to present a risk to a person's safety or welfare—the accused's need for the information outweighs this risk.

Authorised Version C2016C00388 registered 02/05/2016

(3) This section does not prevent the disclosure of an address if:
   (a) the disclosure does not identify it as a particular person's address; and
   (b) it could not reasonably be inferred from the matters disclosed that it is a particular person's address.

(4) If:
   (a) a statement is to be given to the accused; and
   (b) the statement contains an address or telephone number that must not be disclosed;

the address or telephone number may, without reference to the person who made the statement, be deleted from the statement, or rendered illegible, before the statement is given to the accused.

23CK Things need not be disclosed to a party more than once

A party to indictable primary proceedings (the ***current proceedings***) need not disclose anything under this Subdivision to another party if the first-mentioned party has already disclosed it to the other party:
   (a) during the current proceedings; or
   (b) during committal or other proceedings relating to an offence founded on alleged facts that are the same or substantially the same as those for an offence being prosecuted in the current proceedings.

23CL Effect on legal professional privilege and other privileges and duties etc.

Litigation privilege not an excuse for failing to comply with pre-trial disclosure requirements

(1) A party is not excused from disclosing material under this Subdivision on the basis of litigation privilege claimed by the party in relation to the material.

Note: The party can still be excused from disclosing material on the basis of advice privilege (that is, privilege that would, if the material were

Authorised Version C2016C00388 registered 02/05/2016

evidence to be adduced in the Court, protect against a disclosure covered by section 118 of the *Evidence Act 1995*).

(2) This Subdivision does not otherwise:

(a) abrogate or affect the law relating to legal professional privilege; or

(b) amount to a waiver of legal professional privilege.

Note: This means, for example, that legal professional privilege will apply for the trial.

Other privileges and duties unaffected

(3) This Subdivision does not abrogate or affect:

(a) the operation of the *National Security Information (Criminal and Civil Proceedings) Act 2004*; or

(b) the law relating to public interest immunity.

(4) This Subdivision does not abrogate or affect the law relating to any duty of a person investigating the accused to ensure that information and other things are disclosed to the prosecutor or the accused.

Definitions

(5) In this section:

legal professional privilege includes privilege (however described) under Division 1 of Part 3.10 of the *Evidence Act 1995*, or a similar law of a State or Territory.

litigation privilege means privilege (however described) that would, if the material were evidence to be adduced in the Court, protect against a disclosure covered by section 119 of the *Evidence Act 1995*.

Authorised Version C2016C00388 registered 02/05/2016

23CM Consequences of disclosure requirements

Orders to ensure non-compliance does not unfairly affect the other party

(1) The Court may make such orders as it thinks appropriate to ensure that:

(a) any failure by the prosecutor to comply with an order under subsection 23CD(1) does not cause unfairness to the accused; and

(b) any failure by the accused to comply with an order under subsection 23CD(1) does not prejudice the prosecutor's ability to efficiently conduct the prosecution.

(2) However, the Court must not make an order under subsection (1) if it would result in an unfair trial.

Certain evidence cannot be adduced at trial unless there is earlier disclosure

(3) If the accused fails to comply with subsection 23CD(2) in relation to an alibi, the accused may only adduce evidence of the alibi with the leave of the Court.

(4) If the accused fails to comply with subsection 23CD(2) in relation to a mental impairment (within the meaning of section 7.3 of the *Criminal Code*), the accused may only adduce evidence that the accused was suffering from the impairment with the leave of the Court.

23CN Restricting further disclosure of disclosed material

(1) This section restricts what a person (the ***entrusted person***) may do with any information, document or other thing (the ***protected material***) the person obtains as the result of a disclosure under this Subdivision.

(2) The entrusted person commits an offence if the person discloses any protected material to another person.

Authorised Version C2016C00388 registered 02/05/2016

Penalty: Imprisonment for 2 years.

(3) Each of the following is an exception to the prohibition in subsection (2):

(a) the disclosure is for the purposes of the proceedings for which the entrusted person obtained the protected material;

(b) the Court has given leave for the disclosure;

(c) the disclosure happens for the purposes of, or in connection with, the performance of the duties of the entrusted person's official employment;

(d) the disclosure is of protected material that has already been lawfully disclosed in proceedings in open court.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

(4) The entrusted person is not to be required:

(a) to produce to a court or tribunal any document that is or contains protected material; or

(b) to disclose protected material to a court or tribunal.

(5) In this section:

disclose means divulge or communicate.

official employment means:

(a) service as:

(i) the Director of Public Prosecutions; or

(ii) a member of the staff of the Office of the Director of Public Prosecutions; or

(iii) a Special Prosecutor under the *Special Prosecutors Act 1982*; or

(iv) the Attorney-General; or

(v) a person appointed by the Governor-General in relation to the prosecution for which the entrusted person obtained the protected material; or

(b) representing, or otherwise performing services for, a person referred to in paragraph (a); or

Authorised Version C2016C00388 registered 02/05/2016

(c) exercising the powers, or performing the functions, of the Director of Public Prosecutions.

23CO Restricting admissibility of disclosed material as evidence in other proceedings

(1) The Court may order that any or all of the material disclosed under this Subdivision is not admissible:
   (a) in any other proceedings before the Court; or
   (b) in any other court (whether exercising federal jurisdiction or not); or
   (c) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.

(2) An order made under subsection (1) ceases to have effect if, during the indictable primary proceedings, the material is lawfully disclosed in open court.

(3) The Court may, on the application of an interested person (whether during the indictable primary proceedings or otherwise), order that an order made under subsection (1) be:
   (a) set aside; or
   (b) varied;
   if the Court is satisfied it is in the interests of justice to do so.

(4) The Court may, before making an order under subsection (3), direct that notice of the application be given to such persons as it thinks fit or be published in such manner as it thinks fit, or both.

23CP Objecting to indictments

(1) The accused may object to a count in the indictment on the basis of:
   (a) a formal defect apparent on the face of the indictment; or
   (b) the Court lacking jurisdiction; or
   (c) autrefois acquit or autrefois convict; or

Authorised Version C2016C00388 registered 02/05/2016

(d) a pardon.

Note: The objection must be raised during a pre-trial hearing unless the Court allows otherwise (see section 23CC).

(2) If the Court upholds the objection, the Court may:

(a) in every case:

(i) make an order quashing the count in relation to the accused; and

(ii) if after quashing the count, no counts remain in the indictment in relation to the accused or any other accused—make an order quashing the indictment; and

(iii) discharge the accused in relation to the count; and

(iv) make such other orders as it thinks appropriate in the circumstances; or

(b) if the objection is covered by paragraph (1)(a)—make an order for the amendment of the indictment to remove the defect instead of quashing the count.

23CQ Examining witnesses after committal in absence of the jury

(1) After the indictment is filed in the Court, the Court may direct a person to appear for examination before the Court or a Judge, the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court if:

(a) a party applies for the direction; and

(b) the prosecutor has disclosed that the prosecutor proposes to call the person as a witness at a trial on the indictment; and

(c) if the indictment was filed in the Court as a result of proceedings in which the accused was committed for trial—the person was not examined in those proceedings; and

(d) the applicant satisfies the Court that it would be contrary to the interests of justice to proceed to trial without the person being examined.

Note: A person examined under this section will be examined in the absence of a jury.

Authorised Version C2016C00388 registered 02/05/2016

(2) The Court may make such orders as it thinks appropriate in the circumstances to give effect to a direction under subsection (1).

(3) A direction under subsection (1) may permit either or both of the parties to examine the person named in the direction.

(4) For the purposes of paragraph (1)(d), the absence of committal proceedings does not, of itself, mean it will be contrary to the interests of justice to proceed to trial without the person being examined.

Subdivision D—Pre-trial matters (empanelling the jury)

23DA Simplified outline

The following is a simplified outline of this Subdivision:

- There are rules about the number of jurors on a jury.
- Before convening jury panels for trials in a State or Territory, the Sheriff needs to determine one or more jury districts for the State or Territory. A jury roll for each jury district can then be obtained.
- Not everyone on a jury roll is qualified to serve as a juror.
- For each trial, the Sheriff convenes a jury panel by:
    - (a) selecting the jury district and preparing a jury list from the corresponding jury roll; and
    - (b) randomly selecting some of the persons on the jury list and summonsing them to attend court for jury service.
- The jury is then selected from those persons on the jury panel.

Authorised Version C2016C00388 registered 02/05/2016

- A person on the jury panel will not become a juror if they are excused from jury service, or if their inclusion on the jury is successfully challenged. A potential juror may also be asked to temporarily stand aside during the selection of the jury.

23DB Application to criminal proceedings

This Subdivision applies in relation to juries for indictable primary proceedings.

23DC Number of jurors on jury

(1) The number of jurors on a jury is:
  (a) 12; or
  (b) such larger number (not exceeding 15) as the Court orders.

(2) An order under paragraph (1)(b) must be made before the jury is empanelled for the proceedings.

23DD Continuation of the trial with a reduced jury

(1) Subject to subsection (3), if a juror is discharged during a trial, the Court may direct that the trial continue with the remaining jurors.

Note: For when a juror is discharged, see Subdivision E.

(2) If the Court gives a direction under subsection (1) after the jury has retired to consider its verdict on a count in the indictment, the verdict of the remaining jurors has the same effect as if it were the verdict of all the persons who were jurors when the jury retired to consider its verdict.

Note: There must not be more than 12 jurors when the jury retires to consider its verdict (see section 23DE).

(3) A trial must not continue with fewer than 10 jurors.

Authorised Version C2016C00388 registered 02/05/2016

23DE Ballot to reduce additional jurors

If, before the jury is asked to retire to consider its verdict on a count in the indictment, there are more than 12 jurors, a ballot must be conducted to select at random 11 of the jurors who, together with the jury foreperson, will consider the verdict.

Note 1: This means the jury foreperson is excluded from the ballot. For the appointment of the jury foreperson, see section 23EA.

Note 2: The jurors not selected in the ballot are discharged at the end of the conduct of the ballot (see section 23EJ).

23DF Jury districts (establishment and boundaries)

(1) The Sheriff may, in writing, determine that the electoral Divisions specified in the determination constitute a ***jury district*** for a particular State or Territory.

(2) There may be more than one jury district for a State or Territory.

(3) A determination made under subsection (1) is not a legislative instrument.

23DG Jury roll for a jury district

(1) The Sheriff may prepare a written jury roll for a jury district composed of the Rolls (as on the day the Sheriff begins the preparation) for each electoral Division that forms part of the jury district.

(2) A jury roll prepared under subsection (1) is not a legislative instrument.

23DH Qualification and liability for serving on jury

Qualification for serving on jury

(1) A person is qualified to serve as a juror if:

(a) the person's name is on the jury roll for the applicable jury district; and

Authorised Version C2016C00388 registered 02/05/2016

(b) the person is entitled to vote at elections of Members of the House of Representatives in accordance with subsection 93(2) of the *Commonwealth Electoral Act 1918*.

This subsection has effect subject to sections 23DI and 23DJ.

Note 1: A person on the jury roll who is entitled to vote may not be qualified to serve as a juror, see sections 23DI and 23DJ.

Note 2: For ***applicable jury district***, see section 23DL.

Liability to serve on jury

(2) A person who is qualified under subsection (1) to serve as a juror is liable to serve as a juror in particular proceedings unless the person:

(a) is excused from that service for those proceedings under section 23DQ, 23DR or 23DV; or

(b) is discharged as a juror or potential juror for those proceedings under Subdivision E.

Lack of qualification does not affect validity of verdict

(3) Anything done by a jury is not invalid merely because a juror on the jury was not qualified to serve as a juror.

23DI Disqualification from serving on jury (convictions, charges, detention orders etc.)

When a person is not qualified

(1) A person is not qualified to serve as a juror if:

(a) the person has been:

(i) convicted of an offence against a law of the Commonwealth, a State or a Territory; and

(ii) sentenced to imprisonment for life, or to serve a term of imprisonment of more than 12 months, as a result of the conviction; or

(b) the person has been:

Authorised Version C2016C00388 registered 02/05/2016

(i) convicted of an offence against a law of a foreign country; and

(ii) sentenced to death, imprisonment for life, or to serve a term of imprisonment of more than 12 months, as a result of the conviction; or

(c) the person has been:

(i) tried for an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and

(ii) ordered to be detained for life, or for a period of more than 12 months, in a hospital, juvenile facility or other detention facility as a result of the trial; or

(d) the person has, within the last 10 years, been:

(i) convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and

(ii) sentenced to serve a term of imprisonment (including by way of periodic detention) as a result of the conviction; or

(e) the person has, within the last 10 years, been:

(i) tried for an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and

(ii) ordered to be detained in a hospital, juvenile facility or other detention facility as a result of the trial; or

(f) the person is currently:

(i) serving a term of imprisonment (including by way of periodic detention); or

(ii) being detained in a hospital, juvenile facility or other detention facility; or

(iii) subject to an order for periodic home detention or periodic detention in a hospital, juvenile facility or other detention facility; or

(g) the person is currently subject to:

(i) a good behaviour bond or community service order; or

(ii) a similar order; or

Authorised Version C2016C00388 registered 02/05/2016

(h) the person is currently being held in custody for the commission, or suspected commission, of a criminal offence; or

(i) the person:

(i) has been charged with an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and

(ii) is currently at liberty in respect of the offence until the person is required to appear before a court in respect of the offence.

Note: For paragraph (i), the person will be at liberty in respect of the offence if bail is granted for the offence.

Extended meaning of ***serving a term of imprisonment***

(2) For the purposes of subsection (1), ***serving a term of imprisonment*** includes:

(a) the case where:

(i) a person has been sentenced to a term of imprisonment; and

(ii) the sentence has been suspended; and

(iii) the period of suspension has not ended; and

(b) the case where:

(i) a person has been sentenced to a term of imprisonment; and

(ii) the person has started serving the sentence; and

(iii) the person has been released on parole or probation or on a similar basis; and

(iv) that period of release has not ended.

Disregard convictions etc. that have been set aside

(3) For the purposes of this section, disregard a conviction, sentence or order if the conviction, sentence or order has been set aside on appeal or as a result of a pardon.

Authorised Version C2016C00388 registered 02/05/2016

23DJ Disqualification from serving on jury (professional ineligibility)

(1) A person is not qualified to serve as a juror if the person is:

(a) the Governor or Administrator of a State or Territory; or

(b) a judge, or other judicial officer, of a court of a State or Territory; or

(c) a member of the Parliament or Legislative Assembly of a State or Territory; or

(d) a qualified legal practitioner who holds a legal practising certificate in a State or Territory; or

(e) a person whose duties or activities involve or are connected with:

(i) the investigation or prosecution of criminal offences; or

(ii) the administration of justice; or

(iii) the punishment of offenders; or

(f) a person who:

(i) is excluded by a State or Territory law from serving as a juror in a court of that State or Territory; and

(ii) is so excluded because the person's current duties or activities involve or are connected with public administration or emergency services.

(2) Subsection (1) has effect in addition to:

(a) section 89 of the *Navigation Act 2012* and any other law that exempts other categories of persons from serving as jurors; or

(b) the *Jury Exemption Act 1965* and any other law that provides that other categories of persons are not liable to serve as jurors.

For the purposes of this Division, a person exempt from serving, or not liable to serve, as a juror under a law referred to in paragraph (a) or (b) is taken to be not qualified to serve as a juror.

(3) Subsection (1) applies whether the position the person holds is paid or not.

Authorised Version C2016C00388 registered 02/05/2016

23DK When Sheriff is to convene a jury panel

(1) The Court may give the Sheriff a written direction to convene a jury panel for indictable primary proceedings.

(2) The direction must specify the place (the ***sitting place***) in the State or Territory where the jury is to sit.

(3) The Sheriff must comply with the direction.

23DL Sheriff to select the jury district for the proceedings

(1) The Sheriff must, in writing, determine which jury district is to apply to the proceedings. This jury district (the ***applicable jury district***) must be:

(a) the jury district (if any) that includes the sitting place; or

(b) another jury district, in the same State or Territory as the sitting place, that is near the sitting place.

(2) A determination made under subsection (1) is not a legislative instrument.

23DM Sheriff to prepare the jury list for the proceedings

(1) The Sheriff must prepare a jury list for the proceedings.

(2) The ***jury list*** consists of:

(a) the names and addresses; and

(b) if readily available to the Sheriff—the dates of birth and sex;

of persons that the Sheriff selects from the jury roll for the applicable jury district.

Note 1: The jury list may be supplemented under subsection (5).

Note 2: The Sheriff may remove a person's name from the jury list under section 23DO.

(3) The persons to be included in the jury list are to be selected at random from the jury roll.

Authorised Version C2016C00388 registered 02/05/2016

(4) The number of persons to be selected is the number the Sheriff thinks is adequate to allow a jury to be empanelled.

(5) If:

(a) a jury list has been prepared under subsection (1); and

(b) the jury list no longer contains the number of persons the Sheriff thinks is adequate to allow a jury to be empanelled;

the Sheriff may supplement the list by selecting additional persons, who have not already been summonsed under section 23DP for the jury, at random from the jury roll for the applicable jury district.

Note: The situation described in paragraph (b) may arise because of a larger than expected number of persons being removed from the list under section 23DO.

(6) A jury list is not a legislative instrument.

23DN Investigation and questionnaires

(1) The Sheriff may make such enquiries as he or she thinks necessary to determine whether a person included on the jury list:

(a) is not qualified to serve as a juror; or

(b) should be excused from serving as a juror.

(2) Without limiting subsection (1), the Sheriff may send a questionnaire to some or all of the persons included in the jury list.

(3) A person who receives a questionnaire under subsection (2) must complete the questionnaire in the manner specified and return it to the Sheriff within 14 days.

Note: It is an offence if the person fails to return, or properly complete, the questionnaire (see section 58AE).

(4) A failure by a person to comply with subsection (3) does not affect the retention of the person's name on the jury list.

(5) After preparing the jury list, the Sheriff may:

(a) give the Commissioner of the Australian Federal Police the name and other details of any or all of the persons included in the jury list; and

Authorised Version C2016C00388 registered 02/05/2016

(b) request the Commissioner to give information about the criminal history (if any) of each of those persons.

The Commissioner must give the information to the Sheriff.

(6) The Sheriff may give the Court any information that the Commissioner gives the Sheriff under this section.

Note: If the information indicates that the person is not qualified, the Sheriff has power to remove the person's name from the jury list under section 23DO and there is no need to pass the information on to the Court.

(7) The Sheriff must not disclose information given to the Sheriff by the Commissioner under this section except:

(a) to the Court under subsection (6); or

(b) otherwise for the purposes of this Act.

23DO Removing names from jury list

The Sheriff must remove a person's name from the jury list if the Sheriff is satisfied that:

(a) the person is not qualified to be a juror; or

(b) the Sheriff would excuse the person from serving on the jury:

(i) under section 23DQ if the person were a potential juror who had applied under that section to be excused; or

(ii) under section 23DR if the person were a potential juror.

23DP Jury summonses

(1) The Sheriff must issue summonses to a sufficient number of persons on the jury list to allow the empanelment of the jury.

Note: It is an offence if a person issued with a summons fails to attend for jury service in accordance with the summons, and the person has not been excused (see section 58AA).

(2) The persons to be summonsed are to be selected at random from the jury list.

(3) A summons to a person must be in the form, and be served, as provided for in the Rules of Court.

Authorised Version C2016C00388 registered 02/05/2016

(4) The Sheriff may withdraw a summons issued under this section.

23DQ Sheriff's power to excuse—on application

(1) A potential juror (or an interested person on the potential juror's behalf) may apply to the Sheriff, at any time before the potential juror is seated in the jury box under section 23DU, for the potential juror to be excused from serving on the jury.

(2) The Sheriff may excuse the potential juror if the Sheriff is satisfied that there is good cause to excuse the potential juror because of:
   (a) the potential juror's health; or
   (b) undue hardship, financial or otherwise, to the potential juror, or to another person, if the potential juror is not excused; or
   (c) the potential juror's recent service on a jury in any jurisdiction in Australia; or
   (d) substantial inconvenience to the public resulting from the potential juror's serving on the jury; or
   (e) the potential juror's inability, in all the circumstances, to perform the duties of a juror to a reasonable standard.

Note: For paragraph (e), the Sheriff must have regard to the *Disability Discrimination Act 1992*.

23DR Sheriff's power to excuse—on own initiative

(1) At any time before a potential juror is seated in the jury box under section 23DU, the Sheriff may excuse the potential juror from serving on the jury if the Sheriff is satisfied that the potential juror:
   (a) is, in all the circumstances, unable to perform the duties of a juror to a reasonable standard; or
   (b) is otherwise not required for jury service.

Note: The Sheriff must have regard to the *Disability Discrimination Act 1992*.

(2) If the Sheriff becomes aware that a potential juror is not qualified to serve as a juror, the Sheriff must excuse the potential juror from serving on the jury.

Authorised Version C2016C00388 registered 02/05/2016

23DS Preparing the jury panel

(1) The Sheriff must prepare a jury panel by listing the names, addresses and dates of birth of:

(a) each potential juror who has attended in accordance with a jury summons; or

(b) an adequate number of potential jurors, selected at random, from those who have attended in accordance with a jury summons.

(2) Only potential jurors who:

(a) are qualified to serve as jurors; and

(b) are not excused from serving on the jury;

are to be included on the jury panel.

(3) The Sheriff must assign a number to each potential juror who is included on the jury panel, indicating the number next to the person's name on the list prepared.

(4) A potential juror, who is not excused by the Sheriff, remains liable to be included on the jury panel until the potential juror is discharged.

Note: A potential juror will be discharged if excused or successfully challenged (see section 23EI).

23DT Preparing to empanel the jury

(1) At the beginning of the trial, the Sheriff must:

(a) give the Court the list of potential jurors on the jury panel prepared under subsection 23DS(1); and

(b) facilitate the attendance in court of those potential jurors.

(2) Before the selection of persons to be empanelled as the jury for the trial, the Court must inform the parties to the trial that:

(a) the potential jurors whose names and/or numbers are to be called may become jurors for the trial; and

Authorised Version C2016C00388 registered 02/05/2016

(b) if the party wishes to challenge any of them, the party must make the challenge before the potential juror sits in the jury box.

(3) Before the selection of persons to be empanelled as the jury for a trial, the Court must:

(a) inform the potential jurors on the jury panel of the nature of the trial in question, including the offences for which the accused is being tried; and

(b) inform the potential jurors on the jury panel of the identities of:

(i) the parties; and

(ii) to the extent known to the Court, the principal witnesses to be called during the trial; and

(c) call on the potential jurors on the jury panel to apply to be excused if they consider that:

(i) they are not able to give impartial consideration to the case; or

(ii) they should be excused for any other reason.

23DU Empanelling the jury

(1) The Court must ensure that an officer of the Court calls:

(a) the name; or

(b) if a direction under section 23EB has modified the procedure—the number;

of a potential juror selected at random from the jury panel.

(2) If:

(a) 2 or more potential jurors have the same name; and

(b) their name is required to be called under subsection (1);

the officer of the Court must call their name and number.

(3) If a potential juror's name and/or number is called, the potential juror must sit in the jury box unless, before the potential juror can do so, the potential juror is:

(a) excused under this Subdivision from serving on the jury; or

Authorised Version C2016C00388 registered 02/05/2016

(b) stood aside under section 23DZA; or
(c) discharged under subsection 23EI(2).

Note: A potential juror is discharged under subsection 23EI(2) if the potential juror's inclusion on the jury is successfully challenged (see sections 23DX to 23DZ).

(4) The officer of the Court must continue to call the names and/or numbers of potential jurors, as provided under subsection (1), until the required number of jurors under section 23DC are seated in the jury box.

(5) When the required number of jurors under section 23DC are seated in the jury box, those potential jurors must be sworn or make an affirmation.

(6) When every potential juror seated in the jury box has been sworn, or has made an affirmation, those potential jurors are taken to have been empanelled as the jury for the trial.

23DV Court's power to excuse a person from serving on jury

(1) Before a potential juror sits in the jury box, the Court may:
(a) if the potential juror requests (including by giving a note to the Judge); or
(b) of the Court's own motion;
excuse the potential juror from serving on the jury if the Court is satisfied that it is appropriate to do so in the circumstances.

(2) A potential juror who is not empanelled as one of the jurors for the trial under section 23DU is taken to be excused by the Court from serving on the jury at the earlier of:
(a) the closing of the session of court at which the jury delivers its verdict on all counts or a judgment of acquittal under subsection 23FH(2) is delivered; or
(b) the day after the end of the 3 month period starting on the day on which a jury is first empanelled as the jury for the trial.

Authorised Version C2016C00388 registered 02/05/2016

23DW Supplementary jurors

(1) If there is an insufficient number of potential jurors available on the jury panel for empanelment of the jury under section 23DU, the Court may direct the Sheriff to supplement the jury panel by:

(a) if the original panel did not include each potential juror who attended in accordance with a jury summons—selecting additional potential jurors from those attending in the same manner as was done in the formation of the original panel under section 23DS; or

(b) both:

(i) causing additional summonses to be issued under section 23DP to persons not already summonsed under that section for the jury; and

(ii) selecting additional persons from those summonsed and appearing in accordance with that section, in the same manner as was done in the formation of the original panel under section 23DS; or

(c) selecting a sufficient number of persons in the vicinity of the Court who are qualified to serve on the jury.

(2) For the purposes of this Division, a person selected under paragraph (1)(c) is taken to be a potential juror included on the jury panel.

23DX Challenges to potential jurors—general

(1) This section and sections 23DY and 23DZ set out each party's rights to challenge the inclusion of a potential juror in a jury.

(2) If a party wishes to challenge the inclusion of a potential juror in the jury, the party must do so:

(a) after the potential juror's name and/or number has been called in accordance with section 23DU; and

(b) before the potential juror sits in the jury box.

(3) If:

Authorised Version C2016C00388 registered 02/05/2016

(a) the inclusion of a potential juror on the jury is challenged; and

(b) the challenge is upheld;

the potential juror must not be empanelled on the jury.

Note: The potential juror is taken to be discharged (see subsection 23EI(2)).

23DY Challenges for cause

(1) Each party to the proceedings may exercise an unlimited number of challenges for cause.

(2) A challenge to a potential juror for cause must be tried by a Judge before whom the jury is being empanelled.

23DZ Peremptory challenges

The accused is entitled to:

(a) 4 peremptory challenges; and

(b) an additional peremptory challenge if more than 12 jurors are to be empanelled for the proceedings.

Note: If more than one accused is being tried (see sections 23BB and 23BD), then each accused is entitled to this number of challenges.

23DZA Prosecutor may request that potential jurors be stood aside

(1) This section sets out the prosecutor's right to request that a potential juror be stood aside.

(2) If:

(a) a potential juror's name and/or number is called under subsection 23DU(1); and

(b) before the potential juror sits in the jury box, the prosecutor requests the Court to order the potential juror to stand aside;

the Court must order the potential juror to stand aside until all other potential jurors on the jury panel have been called for a first time.

(3) If:

Authorised Version C2016C00388 registered 02/05/2016

(a) all potential jurors on the jury panel have been called for a first time; and

(b) there is fewer than the required number of jurors under section 23DC seated in the jury box;

any potential juror who has been ordered to stand aside is eligible to have his or her name and/or number called a second time in accordance with section 23DU.

Note: Subsection 23DU(1) requires potential jurors to be called at random.

(4) If a potential juror has his or her name and/or number called for a second time in accordance with subsection (3) the prosecutor may not request that the potential juror be stood aside.

Note: The prosecutor may still challenge the potential juror's inclusion in the jury (see section 23DY).

(5) The prosecutor is entitled to:

(a) 4 requests under subsection (2); and

(b) an additional request under subsection (2) if more than 12 jurors are to be empanelled for the proceedings.

Subdivision E—Other jury matters

23EA Appointing the jury foreperson

The jury must appoint a foreperson:

(a) when directed by the Court; or

(b) in the absence of such a direction—as soon as practicable after being empanelled.

23EB Confidentiality directions

(1) The Court may give such directions as the Court thinks necessary in order to protect the security of a juror or potential juror.

(2) Without limiting subsection (1), the Court may direct that a potential juror:

(a) be called under subsection 23DU(1) by number only; and

Authorised Version C2016C00388 registered 02/05/2016

(b) be referred to during the proceedings by number only.

(3) A direction under this section may cover more than one juror or potential juror.

23EC Things to help jury understand issues

(1) The Court may order such things (including copies of documents) as it thinks appropriate in the circumstances to be given to the jury to assist the jury to understand issues during the trial.

(2) The Court may specify in an order under subsection (1) when, and the manner in which, the things are to be given to the jury.

23ED Recalling the jury for further directions or evidence

After the jury retires to consider its verdict on a count in the indictment, but before the jury reaches its verdict on the count, the Court may recall the jury in order for the jury:

(a) to be given further directions; or

(b) to hear further evidence.

23EE When jury can separate

(1) The jury:

(a) may separate at any time before the jury retires to consider its verdict on a count in the indictment; but

(b) must not separate after the jury retires to consider its verdict on the count;

unless the Court orders to the contrary.

(2) The Court need not be in the presence of the jury when making an order under subsection (1).

23EF Directions and potential jurors and jurors

(1) Each juror is subject to the direction of the Sheriff and the Court.

Note: Failing to comply with a direction is an offence (see section 58AC).

Authorised Version C2016C00388 registered 02/05/2016

(2) Each potential juror is, after attending for service as a juror in accordance with the jury summons, subject to the direction of the Sheriff and the Court.

Note: Failing to comply with a direction is an offence (see section 58AB).

23EG Sheriff's powers

Investigations

(1) The Sheriff must investigate whether the verdict of a jury is being, or has been, affected because of the improper conduct of a juror or jurors if:

(a) the Sheriff has reason to suspect that the verdict is being, or has been, so affected, and the Court has consented to the investigation; or

(b) the Court requests the investigation.

Note: During and after the investigation, the Court or the Sheriff can give a direction to a juror under section 23EF.

(2) The Sheriff must report the outcome of the investigation to the Court.

Disclosing information

(3) Subsection (4) applies in relation to a person (the ***officer***) whose duties include convening juries for trials before a court of a State or Territory.

(4) The Sheriff may disclose to the officer information identifying a juror or former juror so that the officer can consider whether to summons the juror or former juror when convening a trial before the State or Territory court.

23EH Jurors' remuneration

The regulations may provide for remuneration and allowances to be payable to the following persons:

Authorised Version C2016C00388 registered 02/05/2016

(a) a potential juror who attends for service as a juror in accordance with a summons issued under section 23DP;
(b) a juror.

23EI Discharge of potential jurors

(1) A potential juror is discharged if the potential juror is excused from serving on the jury under Subdivision D.

(2) A potential juror is discharged if a challenge to the inclusion of the potential juror on the jury is upheld.

23EJ Discharge of jurors—by law

(1) A juror is discharged if the juror is not selected in a ballot conducted under section 23DE in relation to the jury.

(2) A juror is taken to be discharged if the juror dies.

23EK Discharge of jurors—by the Court

The Court, during a trial, must discharge a juror if it appears to the Court that the juror:
(a) is not impartial; or
(b) is incapable of continuing to act as a juror; or
(c) should not continue to act as a juror for any other reason.

23EL Discharge of jury

Discharge if each count relating to the accused is dealt with

(2) The Court must discharge the jury in relation to an accused if each count in the indictment that relates to the accused is covered by one of the following paragraphs:
(a) the Court is satisfied that the jury is not able to reach a unanimous verdict on the count in relation to the accused;
(b) the jury delivers its verdict on the count in relation to the accused;

Authorised Version C2016C00388 registered 02/05/2016

(c) the Court, under subsection 23FJ(1), accepts a plea of guilty by the accused to the count;
(d) the Court enters, under subsection 23FH(2), a judgment of acquittal for the count in relation to the accused;
(e) the count is an alternate to a count covered by one of the above paragraphs.

Discharge in the interests of justice

(3) The Court may, at any time during a trial, discharge a jury if the Court is satisfied that it is expedient to do so in the interests of justice.

Discharge if Judge incapable of proceeding

(4) If, during a trial, a Judge becomes incapable of proceeding with the trial or directing the discharge of the jury, another Judge must discharge the jury.

Discharge if number of jurors falls below 10

(5) The Court must discharge the jury immediately if the number of jurors falls below that permitted in subsection 23DD(3).

23EM Consequences of discharging the jury

General rule

(1) The Court must order a new trial of an accused in relation to a count in the indictment if:
(a) the jury is discharged without delivering a unanimous verdict on the count in relation to the accused; and
(b) the count is not covered by paragraph 23EL(2)(c), (d) or (e).

If Court thinks it appropriate to empanel a new jury from the same jury panel

(2) Subsection (1) does not apply if:

Authorised Version C2016C00388 registered 02/05/2016

(a) the jury is discharged under subsection 23EL(3) or (5) during the 3 month period starting on the day on which a jury is first empanelled for the trial under section 23DU; and

(b) the Court thinks it appropriate to give a direction under subsection (3).

(3) If the jury is discharged under subsection 23EL(3) or (5) during the 3 month period starting on the day on which a jury is first empanelled for the trial under section 23DU, the Court may:

(a) direct an officer of the Court to start the process for empanelling a new jury under section 23DU from the same jury panel; and

(b) give any other direction the Court thinks convenient to give in relation to that process.

Note: For example, the Court may direct the officer to make further enquiries as mentioned in section 23DN of persons on the panel or of the Commissioner of the Australian Federal Police.

(4) For the purposes of empanelling the new jury, this Division (other than this section) applies as if the first jury had not been empanelled.

Note 1: This has the effect of resetting the limits on challenges, and for the standing aside, of potential jurors.

Note 2: The Court may direct the Sheriff to supplement the jury panel under section 23DW.

(5) Despite subsection (4):

(a) the following persons cannot be empanelled on the new jury and remain discharged:

(i) any person previously empanelled as one of the jurors for the trial (including any person discharged otherwise than under subsection 23EJ(1) before the direction under paragraph (3)(a) was given);

(ii) any potential juror in the trial discharged before the direction under paragraph (3)(a) was given; and

(b) to avoid doubt, section 23DT is taken to have been satisfied in relation to the empanelling of the new jury.

Authorised Version C2016C00388 registered 02/05/2016

Subdivision F—Matters relating to pleas, the trial and verdicts

23FA Accused to be arraigned before the jury

(1) If the prosecution of the accused is to proceed to trial, the accused must be arraigned before a jury in accordance with the Rules of Court.

(2) The trial on indictment of the accused starts when the accused is arraigned before the jury.

23FB Practice and procedure applicable to the trial

Unless the Court orders otherwise:

(a) the laws of the Commonwealth; and

(b) the laws of the State or Territory applying under subsection 68(1) of the *Judiciary Act 1903*; and

(c) the Rules of Court;

relating to the practice and procedure to be followed during the trial, are to be those in force at the time the indictment is filed in the Court.

23FC Admissibility of evidence given in committal proceedings

(1) If the trial happens as the result of a court committing the accused for trial before the Court, then this section applies to:

(a) evidence given by witnesses; and

(b) documents tendered in evidence;

(***committal evidence***) during those committal proceedings (whether or not the committal evidence was given, or tendered, in relation to an offence being determined at the trial).

(2) The Court may allow a party to admit committal evidence, in whole or in part, as evidence at the trial if the Court is satisfied:

(a) that the individual who gave the evidence, or tendered the document, in the committal proceedings:

Authorised Version C2016C00388 registered 02/05/2016

(i) is dead, or is so ill as not to be able to travel or to give evidence without a risk of endangering the individual's life; or

(ii) is absent from Australia; or

(b) that there are other valid reasons for doing so.

23FD Entering pleas

(1) The accused may enter a plea of guilty, or not guilty, to a count in the indictment.

Note: The Court may reject a plea of guilty in the interests of justice (see subsection 23FJ(1)).

(2) The accused is taken to have entered a plea of not guilty to a count in the indictment if the accused fails to enter a plea to the count when directed by the Court.

Note: A failure to enter a plea includes a failure to say anything and a failure to give a direct answer.

(3) The accused may both:

(a) enter a plea to a count in the indictment; and

(b) object to the count.

23FE Pleading to some counts in satisfaction of other counts

If:

(a) the accused enters a plea of guilty to one or more counts in the indictment; and

(b) the prosecutor advises the Court that the prosecutor accepts the plea or pleas of guilty in satisfaction of the indictment;

the indictment is taken to be amended so that no other count in the indictment covers the accused.

Authorised Version C2016C00388 registered 02/05/2016

23FF Pleading to different offences capable of being supported by indictment

(1) The accused may enter a plea of guilty to an offence not specified in the indictment if:

(a) the Court has jurisdiction to try a person for the offence; and

(b) the prosecutor consents; and

(c) the matters alleged in the indictment can support an allegation that the accused committed the offence.

(2) For the purposes of this Act, if the accused pleads guilty to an offence in accordance with subsection (1), the indictment is taken to have always included a count against the accused for the offence.

Note: If the accused proposes to enter a plea of guilty to an offence that cannot be supported by the matters alleged in the indictment, the prosecutor will need to amend the indictment under section 23BH to include a count for the offence before the accused can enter the plea to that offence.

23FG Changing pleas

Accused may change plea

(1) The accused may change his or her plea in accordance with this section.

Changing plea to guilty

(2) If the accused has entered a plea of not guilty in relation to a count in the indictment, the accused may change the plea to guilty.

Note: The Court may reject the change of plea in the interests of justice (see subsection 23FJ(1)).

Changing plea to not guilty

(3) If the accused has entered a plea of guilty in relation to a count in the indictment, the accused may change the plea to not guilty only with the leave of the Court. The Court may grant leave at any time

Authorised Version C2016C00388 registered 02/05/2016

before the Court imposes a sentence on the accused in relation to an offence specified in the count.

(4) If the accused changes the plea in accordance with subsection (3):
   (a) the Court must direct that the accused be put on trial in relation to the count; and
   (b) the Court may make such orders as to matters preliminary to the trial as the Court thinks appropriate.

Note: The Court could, for example, make orders under Subdivision C.

23FH Court's verdict if no case to answer

(1) This section applies if:
   (a) after the close of the prosecutor's case for a count in the indictment in relation to the accused; and
   (b) before the jury delivers its verdict for the count in relation to the accused;

the Court finds the accused has no case to answer in relation to the count.

(2) The Court must:
   (a) enter a judgment of acquittal for the count in relation to the accused; and
   (b) discharge the accused in relation to the count.

(3) The Court must not direct the jury to deliver a verdict for the count in relation to the accused.

23FI Jury's verdict

Verdict must be unanimous

(1) The jury's verdict on each count in the indictment must be unanimous. If the indictment includes alternate counts, the jury need only reach a verdict on one of those counts.

Authorised Version C2016C00388 registered 02/05/2016

(2) Before the jury retires to consider its verdict on a count in the indictment, the Court must inform the jury that its verdict must be unanimous.

Jury may deliver alternative verdicts

(3) If an offence specified in a count in the indictment is an offence for which an Act allows the jury to find the accused:
  (a) not guilty of the offence; but
  (b) guilty of another offence;
the Court may inform the jury of this.

(4) If, in accordance with an Act referred to in subsection (3), the jury unanimously finds the accused:
  (a) not guilty of an offence specified in a count in the indictment; but
  (b) guilty of another offence;
the indictment is taken to have always included a count against the accused for the other offence.

Foreperson is to deliver the verdict

(5) The jury's verdict is to be delivered by the jury foreperson.

23FJ Consequences of guilty pleas and guilty verdicts

Guilty pleas

(1) If the accused:
  (a) enters a plea of guilty; or
  (b) changes, in accordance with subsection 23FG(2), a plea of not guilty to a plea of guilty;
to a count in the indictment, the Court must accept the plea of guilty unless:
  (c) the Court gives leave under subsection 23FG(3) for the accused to change the plea of guilty to a plea of not guilty; or

Authorised Version C2016C00388 registered 02/05/2016

(d) it would be contrary to the interests of justice to accept the plea of guilty.

(2) If a plea of guilty is not accepted under subsection (1):
(a) the plea has no further effect; and
(b) the accused is taken to have entered a plea of not guilty to the count.

Guilty verdicts

(3) If the jury delivers a unanimous verdict of guilty for a count in the indictment in relation to an accused, the Court must accept the verdict unless it would be contrary to the interests of justice to do so.

Consequences of accepting a guilty plea or guilty verdict

(4) If a plea of guilty, or a verdict of guilty, is accepted for a count in the indictment in relation to an accused, then:
(a) the Court is taken to have found the count proven in relation to the accused; and
(b) the accused is taken to be convicted of the offence covered by the count; and
(c) the Court must proceed to sentence the accused in relation to the offence (whether or not the Court first adjourns the proceedings); and
(d) if there is an alternate count included in the indictment for the accused and the first-mentioned count—the Court must discharge the accused in relation to the alternate count.

(5) However, if the accused changes, in accordance with subsection 23FG(3), a plea of guilty to the count to a plea of not guilty, then:
(a) paragraphs (4)(a) and (b) are taken never to have applied in relation to the plea of guilty; and
(b) the Court must cease any sentencing proceedings to the extent that those proceedings relate to the plea of guilty; and

Authorised Version C2016C00388 registered 02/05/2016

(c) if the Court has discharged the accused under paragraph (4)(d) in relation to an alternate count—the accused is taken never to have been so discharged.

(6) Paragraph (4)(b) does not apply if, when sentencing the accused in relation to the offence, the Court makes an order under section 19B of the *Crimes Act 1914*.

23FK Consequences of not guilty verdicts

If the jury delivers a unanimous verdict of not guilty for a count in the indictment in relation to the accused, the Court must acquit and discharge the accused in relation to the count.

Subdivision G—Procedure on committal for sentencing

23GA When Subdivision applies

This Subdivision applies if, as a result of the accused entering a plea of guilty to an indictable offence, a court (the ***committal court***) makes an order (the ***committal order***) committing the accused for sentencing before the Court for the offence.

23GB Accused taken to have been committed for trial etc.

(1) For the purposes of this Act and the *Judiciary Act 1903*, the committal court is taken to have made an order:

(a) on the day it made the committal order; and

(b) to the effect of committing the accused for trial before the Court for the indictable offence.

(2) If an indictment including a count covering the indictable offence is filed in accordance with this Division, then this Division applies as if:

(a) the accused entered before the Court, immediately after that filing, a plea of guilty to the count; and

(b) paragraph 23CA(b) were omitted.

Authorised Version C2016C00388 registered 02/05/2016

Note: The Court must accept the plea unless either the Court gives leave to the accused to change the plea to a plea of not guilty, or if it would be contrary to the interests of justice to accept the plea (see subsection 23FJ(1)).

Subdivision H—Custodial and other matters

23HA Remanding in custody when proceedings adjourned

(1) If, during indictable primary proceedings:

(a) there is no bail order having effect for the accused for the offence; or

(b) if a bail order is so having effect, the accused cannot be released on bail for the offence (see subsection 58DE(1));

the Court may, by warrant of commitment, remand the accused in custody during an adjournment in the proceedings.

Note 1: Before the accused's first appearance before the Court, the person may be being remanded in custody or granted bail under the law of a State or Territory applied by subsection 68(1) of the *Judiciary Act 1903*.

Note 2: Subject to this subsection, State or Territory law will apply in relation to custody matters before the Court during the proceedings (see sections 68 and 68B of the *Judiciary Act 1903*).

(2) A warrant of commitment under subsection (1) may be signed by any Judge, the Registrar or any Deputy Registrar, District Registrar or Deputy District Registrar of the Court.

23HB Oaths and affirmations

(1) A person required to make an oath or affirmation under this Division must make the oath or affirmation in the form provided for in the Rules of Court.

(2) The Court may require a person to make an oath or affirmation for the purposes of this Division if the Court thinks this is reasonably necessary.

Authorised Version C2016C00388 registered 02/05/2016

23HC Protecting witnesses etc.

(1) The Court may make such orders as it thinks appropriate in the circumstances to protect:

(a) witnesses called or proposed to be called; or

(b) information, documents and other things admitted or proposed to be admitted;

in indictable primary proceedings.

Note: Part VAA deals with suppression and non-publication orders.

(2) Without limiting subsection (1), the Court may do either or both of the following under that subsection:

(a) order the exclusion of the public, or of persons specified by the Court, from a sitting of the Court;

(b) direct how a witness may give evidence.

23HD Accused cannot make unsworn statements

An accused cannot make an unsworn statement in indictable primary proceedings.

23HE Costs

Nothing in this Act gives the Court power to award costs in indictable primary proceedings.

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Appellate and related jurisdiction (civil proceedings)

23P Appellate jurisdiction in civil proceedings

This Division applies to the Court's appellate jurisdiction in relation to civil matters.

24 Appellate jurisdiction

(1) Subject to this section and to any other Act, whether passed before or after the commencement of this Act (including an Act by virtue of which any judgments referred to in this section are made final and conclusive or not subject to appeal), the Court has jurisdiction to hear and determine:

(a) appeals from judgments of the Court constituted by a single Judge exercising the original jurisdiction of the Court;

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

(c) in such cases as are provided by any other Act, appeals from judgments of a court (other than a Full Court of the Supreme Court) of a State, the Australian Capital Territory or the Northern Territory, exercising federal jurisdiction; and

(d) appeals from judgments of the Federal Circuit Court exercising original jurisdiction under a law of the Commonwealth other than:

(i) the *Family Law Act 1975*; or

(ii) the *Child Support (Assessment) Act 1989*; or

(iii) the *Child Support (Registration and Collection) Act 1988*; or

(iv) regulations under an Act referred to in subparagraph (i), (ii) or (iii); and

Authorised Version C2016C00388 registered 02/05/2016

(e) appeals from judgments of the Federal Circuit Court exercising jurisdiction under section 72Q of the *Child Support (Registration and Collection) Act 1988*.

(1AA) An appeal must not be brought from a judgment referred to in paragraph (1)(a), (d) or (e) if the judgment is:

(a) a determination of an application of the kind mentioned in subsection 20(3); or

(b) a decision to do, or not to do, any of the following:

(i) join or remove a party;

(ii) adjourn or expedite a hearing;

(iii) vacate a hearing date.

(1A) An appeal shall not be brought from a judgment referred to in subsection (1) that is an interlocutory judgment unless the Court or a Judge gives leave to appeal.

(1B) Subsection (1A) is subject to subsection (1C).

(1C) Leave to appeal under subsection (1A) is not required for an appeal from a judgment referred to in subsection (1) that is an interlocutory judgment:

(a) affecting the liberty of an individual; or

(b) in proceedings relating to contempt of the Court or any other court.

(1D) The following are taken to be interlocutory judgments for the purposes of subsections (1A) and (1C):

(a) a judgment by consent;

(b) a decision granting or refusing summary judgment under section 31A;

(c) an order made by the Court under section 37AF, 37AS or 37AT;

(ca) a judgment of the Federal Circuit Court under section 17A of the *Federal Circuit Court of Australia Act 1999*;

(d) an order made by the Federal Circuit Court under section 88F, 88U or 88V of the *Federal Circuit Court of Australia Act 1999*.

Authorised Version C2016C00388 registered 02/05/2016

(1E) The fact that there has been, or can be, no appeal from an interlocutory judgment of the Court in a proceeding does not prevent:

(a) a party from founding an appeal from a final judgment in the proceeding on the interlocutory judgment; or

(b) the Court from taking account of the interlocutory judgment in determining an appeal from a final judgment in the proceeding.

25 Exercise of appellate jurisdiction

(1) The appellate jurisdiction of the Court shall, subject to this section and to the provisions of any other Act, be exercised by a Full Court.

(1AA) The appellate jurisdiction of the Court in relation to an appeal from a judgment of the Federal Circuit Court is to be exercised by:

(a) a single Judge; or

(b) if a Judge considers that it is appropriate for the appellate jurisdiction of the Court in relation to the appeal to be exercised by a Full Court—a Full Court.

(1B) Subsection (1AA) has effect subject to subsections (2) and (2B).

(2) Applications:

(a) for leave or special leave to appeal to the Court; or

(b) for an extension of time within which to institute an appeal to the Court; or

(c) for leave to amend the grounds of an appeal to the Court; or

(d) to stay an order of a Full Court;

must be heard and determined by a single Judge unless:

(e) a Judge directs that the application be heard and determined by a Full Court; or

(f) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.

Authorised Version C2016C00388 registered 02/05/2016

(2A) The Rules of Court may make provision enabling applications of the kind mentioned in subsection (2) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing either with or without the consent of the parties.

(2B) A single Judge (sitting in Chambers or in open court) or a Full Court may:

(a) join or remove a party to an appeal to the Court; or

(aa) give summary judgment; or

(ab) make an interlocutory order pending, or after, the determination of an appeal to the Court; or

(b) make an order by consent disposing of an appeal to the Court (including an order for costs); or

(ba) make an order that an appeal to the Court be dismissed for want of prosecution; or

(bb) make an order that an appeal to the Court be dismissed for:

(i) failure to comply with a direction of the Court; or

(ii) failure of the appellant to attend a hearing relating to the appeal; or

(bc) vary or set aside an order under paragraph (ab), (ba) or (bb); or

(bd) give directions under subsection 37P(2); or

(c) give other directions about the conduct of an appeal to the Court, including directions about:

(i) the use of written submissions; and

(ii) limiting the time for oral argument.

(2BA) In subsection (2B), a reference to an appeal includes a reference to an application of the kind mentioned in subsection (2).

(2BB) An application for the exercise of a power mentioned in subsection (2B) must be heard and determined by a single Judge unless:

(a) a Judge directs that the application be heard and determined by a Full Court; or

Authorised Version C2016C00388 registered 02/05/2016

(b) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.

(2C) The Rules of Court may make provision enabling matters of the kind mentioned in subsection (2B) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing either with or without the consent of the parties.

(3) Except where the Chief Justice considers it impracticable for the Court to be so constituted, a Full Court of the Court for the exercise of jurisdiction in an appeal from a judgment of the Supreme Court of a Territory shall include at least one Judge who holds office as a Judge of the Supreme Court of that Territory.

(4) The jurisdiction of the Court in an appeal from a judgment of the Supreme Court of a Territory constituted by 2 or more Judges shall be exercised by a Full Court of the Court constituted by not less than 5 Judges.

(5) Subject to any other Act, the jurisdiction of the Court in an appeal from a judgment of a Court of summary jurisdiction is to be exercised by:

(a) a single Judge; or

(b) if a Judge considers that it is appropriate for the jurisdiction of the Court in relation to the appeal to be exercised by a Full Court—a Full Court.

(6) The Court constituted by a single Judge may state any case or reserve any question concerning a matter (whether or not an appeal would lie from a judgment of the Judge to a Full Court of the Court on the matter) for the consideration of a Full Court and the Full Court has jurisdiction to hear and determine the case or question.

26 Cases stated and questions reserved

(1) A court from which appeals lie to the Court may state any case or reserve any question concerning a matter with respect to which such an appeal would lie from a judgment of the first-mentioned

Authorised Version C2016C00388 registered 02/05/2016

court for the consideration of the Court and the Court has jurisdiction to hear and determine the case or question.

(2) Subject to any other Act, the jurisdiction of the Court under subsection (1):

(a) if the court stating the case or reserving the question is a court of summary jurisdiction—must be exercised by:

(i) a single Judge; or

(ii) if a Judge considers that it is appropriate for the jurisdiction of the Court in relation to the matter to be exercised by a Full Court—a Full Court; or

(b) if the court stating the case or reserving the question is not a court of summary jurisdiction—must be exercised by a Full Court.

(3) A court referred to in subsection (1) shall not state a case, or reserve or refer a question concerning a matter referred to in that subsection, to a court other than the Court.

27 Evidence on appeal

In an appeal, the Court shall have regard to the evidence given in the proceedings out of which the appeal arose, and has power to draw inferences of fact and, in its discretion, to receive further evidence, which evidence may be taken:

(a) on affidavit; or

(b) by video link, audio link or other appropriate means in accordance with another provision of this Act or another law of the Commonwealth; or

(c) by oral examination before the Court or a Judge; or

(d) otherwise in accordance with section 46.

28 Form of judgment on appeal

(1) Subject to any other Act, the Court may, in the exercise of its appellate jurisdiction:

(a) affirm, reverse or vary the judgment appealed from;

Authorised Version C2016C00388 registered 02/05/2016

(b) give such judgment, or make such order, as, in all the circumstances, it thinks fit, or refuse to make an order;

(c) set aside the judgment appealed from, in whole or in part, and remit the proceeding to the court from which the appeal was brought for further hearing and determination, subject to such directions as the Court thinks fit;

(d) set aside a verdict or finding of a jury, and enter judgment notwithstanding any such verdict or finding;

(f) grant a new trial in any case in which there has been a trial, either with or without a jury, on any ground upon which it is appropriate to grant a new trial; or

(g) award execution from the Court or, in the case of an appeal from another court, award execution from the Court or remit the cause to that other court, or to a court from which a previous appeal was brought, for the execution of the judgment of the Court.

(2) It is the duty of a court to which a cause is remitted in accordance with paragraph (g) of subsection (1) to execute the judgment of the Court in the same manner as if it were its own judgment.

(3) The powers specified in subsection (1) may be exercised by the Court notwithstanding that the notice of appeal asks that part only of the decision may be reversed or varied, and may be exercised in favour of all or any of the respondents or parties, including respondents or parties who have not appealed from or complained of the decision.

(4) An interlocutory judgment or order from which there has been no appeal does not operate to prevent the Court, upon hearing an appeal, from giving such decision upon the appeal as is just.

29 Stay of proceedings and suspension of orders

(1) Where an appeal to the Court from another court has been instituted:

(a) the Court or a Judge, or a judge of that other court (not being the Federal Circuit Court or a court of summary jurisdiction),

Authorised Version C2016C00388 registered 02/05/2016

may order, on such conditions (if any) as it or he or she thinks fit, a stay of all or any proceedings under the judgment appealed from; and

(b) the Court or a Judge may, by order, on such conditions (if any) as it or he or she thinks fit, suspend the operation of an injunction or other order to which the appeal, in whole or in part, relates.

(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 or in relation to the stay of proceedings.

30 New trials

(1) In an appeal in which the Court grants a new trial, the Court may impose such conditions on a party, and may direct such admissions to be made by a party, for the purpose of the new trial as are just.

(2) Where the Court grants a new trial in a suit, the Court:

(a) may grant it, either generally or on particular issues only, as it thinks just; and

(b) may order that testimony of a witness examined at the former trial may be used in the new trial in the manner provided in the order.

Authorised Version C2016C00388 registered 02/05/2016

Division 2A—Appellate and related jurisdiction (criminal proceedings)

Subdivision A—Bringing appeals

30AA Appellate jurisdiction—allowable appeals

Appeals about indictable offences

(1) The Court has jurisdiction to hear and determine an appeal from a judgment of an eligible primary court to the extent the judgment:

(a) convicts the accused of a count in an indictment; or

(b) sentences the accused in relation to a count in an indictment; or

(c) acquits the accused of a count in an indictment as a result of the court (rather than a jury) finding that the accused had no case to answer; or

(d) acquits the accused because of mental illness in relation to a count in an indictment; or

(e) in the case of a judgment of the Court constituted by a single Judge—consists of one or more orders, determinations or findings under Division 6 or 9 of Part IB of the *Crimes Act 1914*.

Appeals against summary judgments

(2) The Court has jurisdiction to hear and determine an appeal from a judgment of:

(a) the Court constituted by a single Judge; or

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

(c) in such cases as are provided by any other Act, a court (other than a Full Court of the Supreme Court) of a State, the Australian Capital Territory or the Northern Territory exercising federal jurisdiction;

in proceedings to try an offence summarily.

Authorised Version C2016C00388 registered 02/05/2016

Appeals about bail and forfeiture of bail security

(3) The Court has jurisdiction to hear and determine an appeal from a judgment of the Court under Part VIB (bail).

Appeals against interim judgments and decisions

(4) The Court has jurisdiction to hear and determine an appeal from a judgment or decision (however described) of the Court constituted by a single Judge if the judgment or decision is made:

(a) in indictable primary proceedings; and

(b) before the making of a judgment to acquit, discharge, convict or sentence the accused of the count in the indictment to which the judgment or decision relates;

and is not a judgment under Part VIB (bail) or an order discharging the jury or a juror.

Note: This subsection gives jurisdiction to hear, for example, appeals from decisions remanding the accused in custody under section 23HA.

Relationship to other Acts

(5) This section has effect subject to any other Act, whether passed before or after the commencement of this Act (including an Act by virtue of which any judgments referred to in this section are made final and conclusive or not subject to appeal).

30AB Leave needed unless question of law or about bail

(1) An appeal under section 30AA cannot be brought from a judgment referred to in subsection 30AA(1) or (2) unless:

(a) the Court or a Judge gives leave to appeal; or

(b) the appeal involves a question of law alone.

(2) An appeal under section 30AA cannot be brought from a judgment or decision of a Judge referred to in subsection 30AA(4) unless that Judge gives leave to appeal.

Authorised Version C2016C00388 registered 02/05/2016

30AC Who may appeal

(1) The accused and the prosecutor, in relation to a judgment or decision referred to in section 30AA, may:
  (a) make an application referred to in subsection 30AE(2) or (3) in relation to the judgment or decision; and
  (b) in accordance with this Division, bring an appeal from the judgment or decision.

(2) However, the prosecutor cannot act under subsection (1) in the case of a judgment covered by paragraph 30AA(1)(d).

30AD Appellate jurisdiction—further appeal if Attorney-General consents

(1) The Attorney-General may consent in writing for the accused to appeal under this section if:
  (a) the accused applies for this consent; and
  (b) the accused satisfies the Attorney-General that there is a doubt or question about either or both of the following:
    (i) the accused's conviction by an eligible primary court of a count in an indictment;
    (ii) the accused's sentence imposed by an eligible primary court in relation to a count in an indictment.

(2) If the Attorney-General consents under subsection (1), the Court has jurisdiction to hear and determine:
  (a) an appeal from a judgment of the eligible primary court, to the extent the judgment so convicts the accused; and
  (b) an appeal from a judgment of the eligible primary court, to the extent the judgment so sentences the accused.

(3) Subsection (1) has effect subject to any other Act, whether passed before or after the commencement of this Act (including an Act by virtue of which any judgments referred to in this section are made final and conclusive or not subject to appeal).

Authorised Version C2016C00388 registered 02/05/2016

30AE Exercise of appellate jurisdiction

(1) The appellate jurisdiction of the Court referred to in sections 30AA and 30AD must, subject to any other Act, be exercised by a Full Court.

(2) Applications:

(a) for leave to appeal under subsection 30AA(1) or (2); or

(b) for an extension of time within which to file:

(i) a notice of application for leave to appeal under subsection 30AA(1) or (2); or

(ii) a notice of appeal under subsection 30AA(1) or (2) for an appeal involving a question of law alone; or

(iii) a notice of appeal under subsection 30AA(3); or

(c) for leave to amend the grounds of an appeal under subsection 30AA(1), (2) or (3); or

(d) to stay an order of a Full Court;

must be heard and determined by a single Judge unless:

(e) a Judge directs that the application be heard and determined by a Full Court; or

(f) the application is made in a proceeding that has already been assigned to a Full Court, and the Full Court considers it is appropriate for it to hear and determine the application.

(3) Applications:

(a) for leave to appeal a judgment or decision of a Judge referred to in subsection 30AA(4); or

(b) for an extension of time within which to file a notice of application for leave to appeal under that subsection; or

(c) for leave to amend the grounds of an appeal under that subsection;

must be heard and determined by the Judge who made the judgment or decision.

(4) In relation to criminal appeal proceedings, a single Judge (sitting in Chambers or in open court) or a Full Court may:

Authorised Version C2016C00388 registered 02/05/2016

(b) make an order by consent disposing of an appeal to the Court; or

(c) make an order that an appeal to the Court be dismissed for want of prosecution; or

(d) make an order that an appeal to the Court be dismissed for:

(i) failure to comply with a direction of the Court; or

(ii) failure of the appellant to attend a hearing relating to the appeal; or

(e) vary or set aside an order under paragraph (c) or (d); or

(f) give directions about the conduct of an appeal to the Court, including directions about:

(i) the use of written submissions; and

(ii) limiting the time for oral argument.

(4A) An application for the exercise of a power mentioned in subsection (4) must be heard and determined by a single Judge unless:

(a) a Judge directs that the application be heard and determined by a Full Court; or

(b) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.

(5) The Rules of Court may make provision enabling an application of the kind mentioned in subsection (2), (3) or (4A) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

(6) The Court constituted by a single Judge may state any case or reserve any question concerning a matter with respect to which an appeal would lie from a judgment of the Judge to a Full Court of the Court for the consideration of a Full Court. The Full Court has jurisdiction to hear and determine the case or question.

(7) Subsections 25(3) and (4) (appeals from Supreme Court of a Territory) apply to appellate jurisdiction under this Division in a corresponding way to the way in which they apply to appellate jurisdiction under Division 2.

Authorised Version C2016C00388 registered 02/05/2016

30AF Time for appealing

(1) This section applies in relation to the filing of:

(a) a notice of application for leave to appeal under subsection 30AA(1), (2) or (4); or

(b) a notice of appeal under subsection 30AA(1) or (2) for an appeal involving a question of law alone; or

(c) a notice of appeal under subsection 30AA(3);

in relation to a judgment or decision.

Note: There are no time limits for an appeal under section 30AD.

(2) The notice must be filed in the Court before the end of 28 days after the end of:

(a) in the case of a judgment convicting the accused—the day the accused is sentenced in relation to the conviction; or

(b) in the case of a judgment sentencing the accused—the day the accused is so sentenced; or

(c) in the case of a judgment or decision referred to in paragraph 30AA(1)(e) or subsection 30AA(3) or (4)—the day the judgment or decision was made; or

(d) otherwise—the day the accused is discharged in relation to the proceedings in which the judgment was given.

(3) However, the Court may, by order, extend (or further extend) the period within which the notice must be filed if the Court is satisfied it is in the interests of justice to do so.

30AG Right to attend

A party to an appeal brought under this Division is entitled to be present at the hearing of the appeal, unless:

(a) the Court orders otherwise; or

(b) the Court, under subsection 47B(1), directs or allows the party to appear by way of video link, audio link or other appropriate means.

Authorised Version C2016C00388 registered 02/05/2016

30AH Practice and procedure applicable to the appeal

Unless the Court orders otherwise:

(a) the laws of the Commonwealth; and

(b) the laws of the State or Territory applying under subsection 68(1) of the *Judiciary Act 1903*; and

(c) the Rules of Court;

relating to the practice and procedure to be followed during criminal appeal proceedings, are to be those in force at the time the following notice is filed in the Court:

(d) if the appeal cannot be brought unless leave is given—the notice of application for leave to appeal;

(e) otherwise—the notice of appeal.

30AI Evidence on appeal

(1) In an appeal under this Division, the Court:

(a) must have regard to the evidence given in the proceedings out of which the appeal arose; and

(b) may draw inferences of fact; and

(c) may, if satisfied it is in the interests of justice to do so, receive further evidence, which may be taken:

(i) on affidavit; or

(ii) by video link, audio link or other appropriate means in accordance with another provision of this Act or another law of the Commonwealth; or

(iii) by oral examination before the Court or a Judge; or

(iv) otherwise in accordance with section 46.

Note: Paragraph (c) does not require the Court to receive further evidence. For example, if the failure to adduce the evidence during the trial is not satisfactorily explained.

(2) The Court may receive further evidence under paragraph (1)(c) by:

(a) directing the evidence be taken by a single Judge; and

(b) having regard to the findings of that Judge in relation to that evidence.

Authorised Version C2016C00388 registered 02/05/2016

30AJ When to allow appeals

Appeals against conviction

(1) The Court must allow an appeal under section 30AA from a judgment convicting the accused if the Court is satisfied:
  (a) that the verdict of the jury (if any) should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence; or
  (b) that the judgment should be set aside on the ground of a wrong decision of any question of law; or
  (c) that there has been a substantial miscarriage of justice.

(2) However, if the Court is satisfied of a matter in paragraph (1)(a) or (b), the Court may dismiss the appeal if the Court is satisfied that there has not been a substantial miscarriage of justice.

Appeals against sentence

(3) The Court must allow an appeal under section 30AA from a judgment sentencing the accused if the Court is satisfied that some other sentence (whether more or less severe) is warranted in law.

Other appeals under section 30AA

(4) The Court may allow any other appeal under section 30AA if the Court is satisfied it is in the interests of justice to do so.

Final appeals

(5) The Court may allow an appeal covered by section 30AD if the Court is satisfied that it would be a miscarriage of justice not to allow the appeal.

30AK Stay or suspension of orders pending appeal

(1) If an appeal to the Court has been instituted under this Division in relation to a judgment or decision (the ***appealed decision***), the Court or a Judge may make an order, on such conditions (if any) as

Authorised Version C2016C00388 registered 02/05/2016

the Court or Judge thinks fit, to stay or otherwise affect the operation or implementation of, any order arising from the appealed decision.

(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 or in relation to the stay or suspension of orders.

30AL Prison sentence not to include time on bail

If:

(a) a person is convicted of an offence and sentenced to a term of imprisonment; and

(b) the person appeals to the Court under this Division against the conviction or sentence, or both;

any time during which the person is released on bail pending the determination of the appeal does not count as part of the term of imprisonment to which the person has been sentenced.

Subdivision B—Form of judgment on appeal

30BA Court may give such judgment as is appropriate

(1) The Court may, by order, when exercising its appellate jurisdiction under this Division:

(a) dismiss or allow the appeal; and

(b) take such other action as it thinks appropriate in the circumstances.

(2) Without limiting subsection (1), the other action the Court can take if it allows an appeal includes that set out in sections 30BB to 30BG.

30BB Allowing appeals against convictions on indictment

(1) This section applies if the Court allows an appeal covered by paragraph 30AA(1)(a) or 30AD(2)(a).

Authorised Version C2016C00388 registered 02/05/2016

(2) The Court may:
  (a) set aside the conviction (with or without an order for a new trial); or
  (b) acquit the accused of the count.

(3) The Court may substitute a guilty verdict for an offence (the ***substituted offence***) other than the offence to which the appeal relates (the ***appealed offence***) if:
  (a) an Act allowed the jury to find the accused not guilty of the appealed offence but guilty of the substituted offence; and
  (b) the Court is satisfied that:
    (i) the guilty verdict relating to the appealed offence cannot stand; and
    (ii) the jury must have been satisfied of facts that prove the accused guilty of the substituted offence; and
  (c) the Court substitutes the guilty verdict in accordance with that other Act.

(4) The Court may substitute a guilty verdict for an offence (the ***substituted offence***) other than the offence to which the appeal relates (the ***appealed offence***) if the Court is satisfied that:
  (a) the Court has jurisdiction to try a person for the substituted offence; and
  (b) the maximum penalty for the substituted offence does not exceed the maximum penalty for the appealed offence; and
  (c) the guilty verdict relating to the appealed offence cannot stand; and
  (d) the substituted offence is covered by the same indictment as the appealed offence; and
  (e) the jury must have been satisfied of facts that prove the accused guilty of the substituted offence.

(5) For a guilty verdict substituted under subsection (3) or (4), the Court may:
  (a) sentence the accused in relation to the substituted offence; and

Authorised Version C2016C00388 registered 02/05/2016

(b) set aside the conviction and sentence relating to the appealed offence.

The accused is taken to be convicted of the substituted offence unless the Court makes an order under section 19B of the *Crimes Act 1914* when sentencing the accused for the substituted offence.

30BC Allowing appeals against sentence

(1) This section applies if the Court allows an appeal covered by paragraph 30AA(1)(b) or 30AD(2)(b).

(2) The Court may:

(a) increase or decrease the sentence; or

(b) substitute a different sentence; or

(c) in the case of an appeal against a judgment in which one or more orders were made under subsection 19B(1) of the *Crimes Act 1914*:

(i) vary or set aside any or all of the orders; or

(ii) set aside the orders, record a conviction of the accused and sentence the accused.

30BD Allowing appeals for certain acquittals

(1) This section applies if the Court allows an appeal covered by paragraph 30AA(1)(c) or (d).

(2) The Court may:

(a) set aside the acquittal; and

(b) order that there be, or not be, a new trial.

30BE Allowing appeals involving unfitness, mental illness etc.

(1) This section applies if the Court allows an appeal covered by paragraph 30AA(1)(e).

(2) The Court may vary or set aside:

(a) the order, determination or finding; and

(b) any related orders, determinations or findings.

Authorised Version C2016C00388 registered 02/05/2016

30BF Allowing appeals from summary proceedings

(1) This section applies if the Court allows an appeal covered by subsection 30AA(2).

(2) For an appeal against conviction, the Court may set aside the conviction, and:
  (a) record an acquittal; or
  (b) remit the matter to the Judge or magistrate for further hearing (with or without directions), or to a different Judge or magistrate for a new hearing (with or without directions).

(3) For an appeal against sentence, the Court may:
  (a) increase or decrease the sentence; or
  (b) substitute a different sentence.

(4) For an appeal against a judgment in which one or more orders were made under Division 8 of Part IB, or subsection 19B(1), of the *Crimes Act 1914*, the Court may:
  (a) vary or set aside any or all of the orders; and
  (b) if it sets aside an order, record a conviction of the accused and/or sentence the accused.

(5) For an appeal against acquittal, the Court may set aside the acquittal, and:
  (a) record a conviction; or
  (b) remit the matter to the Judge or magistrate for further hearing (with or without directions), or to a different Judge or magistrate for a new hearing (with or without directions).

30BG Allowing appeals against bail, bail forfeiture or interim judgments and decisions (including about custody)

(1) This section applies if the Court allows an appeal covered by subsection 30AA(3) or (4).

(2) The Court may, in every case:
  (a) set aside the judgment or decision (the ***appealed decision***); or

Authorised Version C2016C00388 registered 02/05/2016

(b) vary the appealed decision; or

(c) substitute a new judgment or decision for the appealed decision;

and make orders about custody or bail.

(3) The Court may, if it allows an appeal covered by subsection 30AA(4), order the continuation or cessation of the proceedings in which the appealed decision was made.

30BH Matters relevant to form of judgment on appeal

(1) The powers in this Subdivision may be exercised even though the notice of appeal asks that only part of the judgment or decision be reversed or varied.

(2) For the purposes of sentencing an accused under this Subdivision (including by way of substituting a different sentence), the Court's powers are taken to include those of the court from which the appeal was made.

Note: This means the Court could, for example, sentence the accused by making an order under section 19B of the *Crimes Act 1914*.

(3) This Subdivision has effect subject to section 80 of the Constitution and to any other Act.

Subdivision C—References

30CA Cases stated and questions reserved

Cases/questions from proceedings other than committal proceedings

(1) A court in proceedings from which appeals lie under section 30AA (other than proceedings covered by subsection (2)) may state any case or reserve any question concerning a matter with respect to which such an appeal would lie for the consideration of the Court.

Authorised Version C2016C00388 registered 02/05/2016

Cases/questions from committal proceedings

(2) If, in proceedings before a court of a State or Territory (the ***committals court***), the court:

(a) can, under subsection 68A(2) of the *Judiciary Act 1903*, commit a person for trial or sentencing before either:

(i) the Court; or

(ii) a superior court of the State or Territory; and

(b) can, under a law of the State or Territory, state a case or reserve a question for the consideration of that superior court;

the committals court may instead choose to state the case or reserve the question for the consideration of the Court.

General rules

(3) The Court has jurisdiction to hear and determine a case or question it receives under subsection (1) or (2).

(4) Subject to any other Act, this jurisdiction of the Court:

(a) if the court stating the case or reserving the question is not a court of summary jurisdiction—must be exercised by a Full Court; or

(b) otherwise—may be exercised by a single Judge or by a Full Court.

(5) A court must not state a case, or reserve a question concerning a matter referred to in subsection (1), to a court other than the Court.

30CB Questions referred after trial

(1) If a judgment of the Court acquits a person following a trial on indictment for an indictable offence, the prosecutor may apply to the Court or a Judge for leave to refer a question of law arising from the judgment to a Full Court for its determination.

(2) If leave is granted, both the prosecutor and the acquitted person may make submissions to the Full Court in relation to the Court's determination of the question of law.

Authorised Version C2016C00388 registered 02/05/2016

(3) A determination made by the Court on the question of law does not affect the person's acquittal.

(4) The Court may make orders to ensure each party to proceedings under this section is adequately represented in those proceedings. This subsection has effect despite section 30DA.

Subdivision D—Other

30DA Costs

Nothing in this Act gives the Court power to award costs in:

(a) criminal appeal proceedings; or

(b) proceedings before the Court under section 30CA or 30CB; or

(c) proceedings referred to the Court under section 20B of the *Crimes Act 1914* (as that section applies because of subsection 68A(6) of the *Judiciary Act 1903*).

Authorised Version C2016C00388 registered 02/05/2016

Division 3—General

31 Contempt of Court

(1) Subject to any other Act, the Court has the same power to punish contempts of its power and authority as is possessed by the High Court in respect of contempts of the High Court.

(2) The jurisdiction of the Court to punish a contempt of the Court committed in the face or hearing of the Court may be exercised by the Court as constituted at the time of the contempt.

31A Summary judgment

(1) The 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 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.

Authorised Version C2016C00388 registered 02/05/2016

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

(5) This section does not apply to criminal proceedings.

31B Prerogative of mercy unaffected

Nothing in this Part abrogates or affects the prerogative of mercy.

32 Jurisdiction in associated matters

Associated matters—civil proceedings

(1) To the extent that the Constitution permits, jurisdiction is conferred on the Court in respect of matters not otherwise within its jurisdiction that are associated with matters (the ***core matters***) in which the jurisdiction of the Court is invoked.

(2) The jurisdiction conferred by subsection (1) extends to jurisdiction to hear and determine an appeal from a judgment of a court so far as it relates to a matter that is associated with a matter (the ***core matter***) in respect of which an appeal from that judgment, or another judgment of that court, is brought.

(3) Subsections (1) and (2) do not apply in relation to a core matter that is an indictable offence matter.

Associated matters—indictable offences

(4) To the extent that the Constitution permits, jurisdiction is conferred on the Court in respect of matters (the ***related matters***) that:

(a) arise under any laws made by the Parliament; and

(b) are not otherwise within the Court's jurisdiction; and

(c) relate to one or more indictable offences;

that are associated with an indictable offence matter in which the jurisdiction of the Court is invoked.

Authorised Version C2016C00388 registered 02/05/2016

(5) The jurisdiction conferred by subsection (4) extends to jurisdiction to hear and determine an appeal from a judgment of a court so far as it relates to a related matter that is associated with an indictable offence matter in respect of which an appeal from that judgment, or another judgment of that court, is brought.

Indictable offence matters

(6) For the purposes of this Act, a matter is an ***indictable offence matter*** if a proceeding in relation to the matter would be an indictable primary proceeding.

32AA Proceedings not to be instituted in the Court if an associated matter is before the Federal Circuit Court

(1) Proceedings must not be instituted in the Court in respect of a matter if:
  (a) the Federal Circuit Court has jurisdiction in that matter; and
  (b) proceedings in respect of an associated matter are pending in the Federal Circuit Court.

(2) If:
  (a) proceedings are instituted in the Court in contravention of subsection (1); and
  (b) the proceedings are subsequently transferred to the Federal Circuit Court;

the proceedings are taken to be as valid as they would have been if subsection (1) had not been enacted.

32AB Discretionary transfer of civil proceedings to the Federal Circuit Court

(1) If a proceeding is pending in the Court, the Court may, by order, transfer the proceeding from the Court to the Federal Circuit Court.

(2) The Court may transfer a proceeding under subsection (1):
  (a) on the application of a party to the proceeding; or
  (b) on its own initiative.

Authorised Version C2016C00388 registered 02/05/2016

(3) The Rules of Court may make provision in relation to transfers of proceedings to the Federal Circuit Court under subsection (1).

(4) In particular, the Rules of Court may set out factors that are to be taken into account by the Court in deciding whether to transfer a proceeding to the Federal Circuit Court under subsection (1).

(5) Before Rules of Court are made for the purposes of subsection (3) or (4), the Court must consult the Federal Circuit Court.

(6) In deciding whether to transfer a proceeding to the Federal Circuit Court under subsection (1), the Court must have regard to:

(a) any Rules of Court made for the purposes of subsection (4); and

(b) whether proceedings in respect of an associated matter are pending in the Federal Circuit Court; and

(c) whether the resources of the Federal Circuit Court are sufficient to hear and determine the proceeding; and

(d) the interests of the administration of justice.

(7) If an order is made under subsection (1), the Court may make such orders as it considers necessary pending the disposal of the proceeding by the Federal Circuit Court.

(8) An appeal does not lie from a decision of the Court in relation to the transfer of a proceeding under subsection (1).

(8A) The Federal Circuit Court has jurisdiction in a matter that:

(a) is the subject of a proceeding transferred to the court under this section; and

(b) is a matter in which the court does not have jurisdiction apart from this subsection.

To avoid doubt, the court's jurisdiction under this subsection is not subject to limits set by another provision.

(9) The reference in subsection (1) to a proceeding pending in the Court includes a reference to a proceeding that was instituted in contravention of section 32AA.

Authorised Version C2016C00388 registered 02/05/2016

(9A) This section does not apply to criminal proceedings.

(10) This section does not apply to proceedings of a kind specified in the regulations.

32A State Supreme Courts invested with jurisdiction in Chambers

(1) In any matter pending in the Federal Court of Australia, the Supreme Court of a State is invested with federal jurisdiction, and, to the extent that the Constitution permits, jurisdiction is conferred on the Supreme Court of the Australian Capital Territory and on the Supreme Court of the Northern Territory, to hear and determine any application that may be made to a Judge of the first-mentioned court sitting in Chambers.

(2) The jurisdiction under this section 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 Judge of the Federal Court of Australia sitting in Chambers and any appeal against the order, or proceedings for enforcement of the order or for contempt of court in relation to the order, shall be brought and dealt with as if the order were an order of a Judge of the Federal Court of Australia.

(3) The power of the Judges of the Federal Court of Australia or a majority of them under section 59 to make Rules of Court shall be deemed to extend to Rules of Court relating to the practice and procedure to be followed in applications in accordance with this section.

(4) This section does not apply to a proceeding that is:
(a) an indictable primary proceeding; or
(b) an Australian market proceeding within the meaning of the *Trans-Tasman Proceedings Act 2010*.

Authorised Version C2016C00388 registered 02/05/2016

Part IV—Appeals to High Court

33 Appeals to High Court

(1) The jurisdiction of the High Court to hear and determine appeals from judgments of the Court, whether in civil or criminal matters, is subject to the exceptions and regulations prescribed by this section.

(2) Except as otherwise provided by another Act, an appeal shall not be brought to the High Court from a judgment of the Court constituted by a single Judge exercising the original jurisdiction of the Court.

(3) Except as otherwise provided by another Act, an appeal shall not be brought from a judgment of a Full Court of the Court unless the High Court gives special leave to appeal.

(4) An appeal must not be brought from a judgment of the Court constituted by a single Judge exercising the appellate jurisdiction of the Court unless the High Court gives special leave to appeal.

(4A) An appeal must not be brought to the High Court from a judgment of a Full Court of the Court exercising the original jurisdiction of the Court if the judgment is:

(a) a determination of an application of the kind mentioned in subsection 20(3); or

(b) a decision to do, or not to do, any of the following:

(i) join or remove a party;

(ii) adjourn or expedite a hearing;

(iii) vacate a hearing date.

(4B) An appeal must not be brought to the High Court from a judgment of the Court (whether constituted by a Full Court or a single Judge) in the exercise of its appellate jurisdiction if the judgment is:

Authorised Version C2016C00388 registered 02/05/2016

(a) a determination of an application of the kind mentioned in subsection 25(2); or

(c) an order under section 29; or

(d) a decision to do, or not to do, any of the following:

(i) join or remove a party;

(ii) grant leave to defend a proceeding;

(iii) reinstate an appeal that was taken to have been abandoned or dismissed;

(iv) extend the time for making an application for leave to appeal;

(v) adjourn or expedite a hearing;

(vi) vacate a hearing date.

(4C) The fact that there has been, or can be, no appeal to the High Court from an interlocutory judgment of the Court in a proceeding does not prevent:

(a) a party from founding an appeal from a final judgment in the proceeding on the interlocutory judgment; or

(b) the High Court from taking account of the interlocutory judgment in determining:

(i) an appeal from a final judgment in the proceeding; or

(ii) an application for special leave to appeal from a final judgment in the proceeding.

(6) The jurisdiction of the High Court to hear and determine an appeal in accordance with this section shall be exercised by a Full Court of the High Court consisting of not less than 3 Justices.

Authorised Version C2016C00388 registered 02/05/2016

Part IVA—Representative proceedings

Division 1—Preliminary

33A Interpretation

In this Part, unless the contrary intention appears:

group member means a member of a group of persons on whose behalf a representative proceeding has been commenced.

representative party means a person who commences a representative proceeding.

representative proceeding means a proceeding commenced under section 33C.

respondent means a person against whom relief is sought in a representative proceeding.

sub-group member means a person included in a sub-group established under section 33Q.

sub-group representative party means a person appointed to be a sub-group representative party under section 33Q.

33B Application

A proceeding may only be brought under this Part in respect of a cause of action arising after the commencement of the *Federal Court of Australia Amendment Act 1991*.

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Commencement of representative proceeding

33C Commencement of proceeding

(1) Subject to this Part, where:

(a) 7 or more persons have claims against the same person; and

(b) the claims of all those persons are in respect of, or arise out of, the same, similar or related circumstances; and

(c) the claims of all those persons give rise to a substantial common issue of law or fact;

a proceeding may be commenced by one or more of those persons as representing some or all of them.

(2) A representative proceeding may be commenced:

(a) whether or not the relief sought:

(i) is, or includes, equitable relief; or

(ii) consists of, or includes, damages; or

(iii) includes claims for damages that would require individual assessment; or

(iv) is the same for each person represented; and

(b) whether or not the proceeding:

(i) is concerned with separate contracts or transactions between the respondent in the proceeding and individual group members; or

(ii) involves separate acts or omissions of the respondent done or omitted to be done in relation to individual group members.

33D Standing

(1) A person referred to in paragraph 33C(1)(a) who has a sufficient interest to commence a proceeding on his or her own behalf against another person has a sufficient interest to commence a representative proceeding against that other person on behalf of other persons referred to in that paragraph.

Authorised Version C2016C00388 registered 02/05/2016

(2) Where a person has commenced a representative proceeding, the person retains a sufficient interest:

(a) to continue that proceeding; and

(b) to bring an appeal from a judgment in that proceeding;

even though the person ceases to have a claim against the respondent.

33E Is consent required to be a group member?

(1) The consent of a person to be a group member in a representative proceeding is not required unless subsection (2) applies to the person.

(2) None of the following persons is a group member in a representative proceeding unless the person gives written consent to being so:

(a) the Commonwealth, a State or a Territory;

(b) a Minister or a Minister of a State or Territory;

(c) a body corporate established for a public purpose by a law of the Commonwealth, of a State or of a Territory, other than an incorporated company or association; or

(d) an officer of the Commonwealth, of a State or of a Territory, in his or her capacity as such an officer.

33F Persons under disability

(1) It is not necessary for a person under disability to have a next friend or committee merely in order to be a group member.

(2) A group member who is under disability may only take a step in the representative proceeding, or conduct part of the proceeding, by his or her next friend or committee, as the case requires.

33G Representative proceeding not to be commenced in certain circumstances

A representative proceeding may not be commenced if the proceeding would be concerned only with claims in respect of

Authorised Version C2016C00388 registered 02/05/2016

which the Court has jurisdiction solely by virtue of the *Jurisdiction of Courts (Cross-vesting) Act 1987* or a corresponding law of a State or Territory.

33H Originating process

(1) An application commencing a representative proceeding, or a document filed in support of such an application, must, in addition to any other matters required to be included:

(a) describe or otherwise identify the group members to whom the proceeding relates; and

(b) specify the nature of the claims made on behalf of the group members and the relief claimed; and

(c) specify the questions of law or fact common to the claims of the group members.

(2) In describing or otherwise identifying group members for the purposes of subsection (1), it is not necessary to name, or specify the number of, the group members.

33J Right of group member to opt out

(1) The Court must fix a date before which a group member may opt out of a representative proceeding.

(2) A group member may opt out of the representative proceeding by written notice given under the Rules of Court before the date so fixed.

(3) The Court, on the application of a group member, the representative party or the respondent in the proceeding, may fix another date so as to extend the period during which a group member may opt out of the representative proceeding.

(4) Except with the leave of the Court, the hearing of a representative proceeding must not commence earlier than the date before which a group member may opt out of the proceeding.

Authorised Version C2016C00388 registered 02/05/2016

33K Causes of action accruing after commencement of representative proceeding

(1) The Court may at any stage of a representative proceeding, on application made by the representative party, give leave to amend the application commencing the representative proceeding so as to alter the description of the group.

(2) The description of the group may be altered so as to include a person:

(a) whose cause of action accrued after the commencement of the representative proceeding but before such date as the Court fixes when giving leave; and

(b) who would have been included in the group, or, with the consent of the person would have been included in the group, if the cause of action had accrued before the commencement of the proceeding.

(3) The date mentioned in paragraph (2)(a) may be the date on which leave is given or another date before or after that date.

(4) Where the Court gives leave under subsection (1), it may also make any other orders it thinks just, including an order relating to the giving of notice to persons who, as a result of the amendment, will be included in the group and the date before which such persons may opt out of the proceeding.

33L Situation where fewer than 7 group members

If, at any stage of a representative proceeding, it appears likely to the Court that there are fewer than 7 group members, the Court may, on such conditions (if any) as it thinks fit:

(a) order that the proceeding continue under this Part; or

(b) order that the proceeding no longer continue under this Part.

33M Cost of distributing money etc. excessive

Where:

Authorised Version C2016C00388 registered 02/05/2016

(a) the relief claimed in a representative proceeding is or includes payment of money to group members (otherwise than in respect of costs); and

(b) on application by the respondent, the Court concludes that it is likely that, if judgment were to be given in favour of the representative party, the cost to the respondent of identifying the group members and distributing to them the amounts ordered to be paid to them would be excessive having regard to the likely total of those amounts;

the Court may, by order:

(c) direct that the proceeding no longer continue under this Part; or

(d) stay the proceeding so far as it relates to relief of the kind mentioned in paragraph (a).

33N Order that proceeding not continue as representative proceeding where costs excessive etc.

(1) The Court may, on application by the respondent or of its own motion, order that a proceeding no longer continue under this Part where it is satisfied that it is in the interests of justice to do so because:

(a) the costs that would be incurred if the proceeding were to continue as a representative proceeding are likely to exceed the costs that would be incurred if each group member conducted a separate proceeding; or

(b) all the relief sought can be obtained by means of a proceeding other than a representative proceeding under this Part; or

(c) the representative proceeding will not provide an efficient and effective means of dealing with the claims of group members; or

(d) it is otherwise inappropriate that the claims be pursued by means of a representative proceeding.

Authorised Version C2016C00388 registered 02/05/2016

(2) If the Court dismisses an application under this section, the Court may order that no further application under this section be made by the respondent except with the leave of the Court.

(3) Leave for the purposes of subsection (2) may be granted subject to such conditions as to costs as the Court considers just.

33P Consequences of order that proceeding not continue under this Part

Where the Court makes an order under section 33L, 33M or 33N that a proceeding no longer continue under this Part:

(a) the proceeding may be continued as a proceeding by the representative party on his or her own behalf against the respondent; and

(b) on the application of a person who was a group member for the purposes of the proceeding, the Court may order that the person be joined as an applicant in the proceeding.

33Q Determination of issues where not all issues are common

(1) If it appears to the Court that determination of the issue or issues common to all group members will not finally determine the claims of all group members, the Court may give directions in relation to the determination of the remaining issues.

(2) In the case of issues common to the claims of some only of the group members, the directions given by the Court may include directions establishing a sub-group consisting of those group members and appointing a person to be the sub-group representative party on behalf of the sub-group members.

(3) Where the Court appoints a person other than the representative party to be a sub-group representative party, that person, and not the representative party, is liable for costs associated with the determination of the issue or issues common to the sub-group members.

Authorised Version C2016C00388 registered 02/05/2016

33R Individual issues

(1) In giving directions under section 33Q, the Court may permit an individual group member to appear in the proceeding for the purpose of determining an issue that relates only to the claims of that member.

(2) In such a case, the individual group member, and not the representative party, is liable for costs associated with the determination of the issue.

33S Directions relating to commencement of further proceedings

Where an issue cannot properly or conveniently be dealt with under section 33Q or 33R, the Court may:

(a) if the issue concerns only the claim of a particular member—give directions relating to the commencement and conduct of a separate proceeding by that member; or

(b) if the issue is common to the claims of all members of a sub-group—give directions relating to the commencement and conduct of a representative proceeding in relation to the claims of those members.

33T Adequacy of representation

(1) If, on an application by a group member, it appears to the Court that a representative party is not able adequately to represent the interests of the group members, the Court may substitute another group member as representative party and may make such other orders as it thinks fit.

(2) If, on an application by a sub-group member, it appears to the Court that a sub-group representative party is not able adequately to represent the interests of the sub-group members, the Court may substitute another person as sub-group representative party and may make such other orders as it thinks fit.

Authorised Version C2016C00388 registered 02/05/2016

33U Stay of execution in certain circumstances

Where a respondent in a representative proceeding commences a proceeding in the Court against a group member, the Court may order a stay of execution in respect of any relief awarded to the group member in the representative proceeding until the other proceeding is determined.

33V Settlement and discontinuance—representative proceeding

(1) A representative proceeding may not be settled or discontinued without the approval of the Court.

(2) If the Court gives such an approval, it may make such orders as are just with respect to the distribution of any money paid under a settlement or paid into the Court.

33W Settlement of individual claim of representative party

(1) A representative party may, with leave of the Court, settle his or her individual claim in whole or in part at any stage of the representative proceeding.

(2) A representative party who is seeking leave to settle, or who has settled, his or her individual claim may, with leave of the Court, withdraw as representative party.

(3) Where a person has sought leave to withdraw as representative party under subsection (2), the Court may, on the application of a group member, make an order for the substitution of another group member as representative party and may make such other orders as it thinks fit.

(4) Before granting a person leave to withdraw as a representative party:

(a) the Court must be satisfied that notice of the application has been given to group members in accordance with subsection 33X(1) and in sufficient time for them to apply to

Authorised Version C2016C00388 registered 02/05/2016

have another person substituted as the representative party; and

(b) any application for the substitution of another group member as a representative party has been determined.

(5) The Court may grant leave to a person to withdraw as representative party subject to such conditions as to costs as the Court considers just.

Authorised Version C2016C00388 registered 02/05/2016

Division 3—Notices

33X Notice to be given of certain matters

(1) Notice must be given to group members of the following matters in relation to a representative proceeding:

(a) the commencement of the proceeding and the right of the group members to opt out of the proceeding before a specified date, being the date fixed under subsection 33J(1);

(b) an application by the respondent in the proceeding for the dismissal of the proceeding on the ground of want of prosecution;

(c) an application by a representative party seeking leave to withdraw under section 33W as representative party.

(2) The Court may dispense with compliance with any or all of the requirements of subsection (1) where the relief sought in a proceeding does not include any claim for damages.

(3) If the Court so orders, notice must be given to group members of the bringing into Court of money in answer to a cause of action on which a claim in the representative proceeding is founded.

(4) Unless the Court is satisfied that it is just to do so, an application for approval of a settlement under section 33V must not be determined unless notice has been given to group members.

(5) The Court may, at any stage, order that notice of any matter be given to a group member or group members.

(6) Notice under this section must be given as soon as practicable after the happening of the event to which the notice relates.

33Y Notices—ancillary provisions

(1) This section is concerned with notices under section 33X.

(2) The form and content of a notice must be as approved by the Court.

Authorised Version C2016C00388 registered 02/05/2016

(3) The Court must, by order, specify:

(a) who is to give the notice; and

(b) the way in which the notice is to be given;

and the order may include provision:

(c) directing a party to provide information relevant to the giving of the notice; and

(d) relating to the costs of notice.

(4) An order under subsection (3) may require that notice be given by means of press advertisement, radio or television broadcast, or by any other means.

(5) The Court may not order that notice be given personally to each group member unless it is satisfied that it is reasonably practicable, and not unduly expensive, to do so.

(6) A notice that concerns a matter for which the Court's leave or approval is required must specify the period within which a group member or other person may apply to the Court, or take some other step, in relation to the matter.

(7) A notice that includes or concerns conditions must specify the conditions and the period, if any, for compliance.

(8) The failure of a group member to receive or respond to a notice does not affect a step taken, an order made, or a judgment given, in a proceeding.

Authorised Version C2016C00388 registered 02/05/2016

Division 4—Judgment etc.

33Z Judgment—powers of the Court

(1) The Court may, in determining a matter in a representative proceeding, do any one or more of the following:
   (a) determine an issue of law;
   (b) determine an issue of fact;
   (c) make a declaration of liability;
   (d) grant any equitable relief;
   (e) make an award of damages for group members, sub-group members or individual group members, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies;
   (f) award damages in an aggregate amount without specifying amounts awarded in respect of individual group members;
   (g) make such other order as the Court thinks just.

(2) In making an order for an award of damages, the Court must make provision for the payment or distribution of the money to the group members entitled.

(3) Subject to section 33V, the Court is not to make an award of damages under paragraph (1)(f) unless a reasonably accurate assessment can be made of the total amount to which group members will be entitled under the judgment.

(4) Where the Court has made an order for the award of damages, the Court may give such directions (if any) as it thinks just in relation to:
   (a) the manner in which a group member is to establish his or her entitlement to share in the damages; and
   (b) the manner in which any dispute regarding the entitlement of a group member to share in the damages is to be determined.

Authorised Version C2016C00388 registered 02/05/2016

33ZA Constitution etc. of fund

(1) Without limiting the operation of subsection 33Z(2), in making provision for the distribution of money to group members, the Court may provide for:

(a) the constitution and administration of a fund consisting of the money to be distributed; and

(b) either:

(i) the payment by the respondent of a fixed sum of money into the fund; or

(ii) the payment by the respondent into the fund of such instalments, on such terms, as the Court directs to meet the claims of group members; and

(c) entitlements to interest earned on the money in the fund.

(2) The costs of administering a fund are to be borne by the fund, or by the respondent in the representative proceeding, as the Court directs.

(3) Where the Court orders the constitution of a fund mentioned in subsection (1), the order must:

(a) require notice to be given to group members in such manner as is specified in the order; and

(b) specify the manner in which a group member is to make a claim for payment out of the fund and establish his or her entitlement to the payment; and

(c) specify a day (which is 6 months or more after the day on which the order is made) on or before which the group members are to make a claim for payment out of the fund; and

(d) make provision in relation to the day before which the fund is to be distributed to group members who have established an entitlement to be paid out of the fund.

(4) The Court may allow a group member to make a claim after the day fixed under paragraph (3)(c) if:

(a) the fund has not already been fully distributed; and

Authorised Version C2016C00388 registered 02/05/2016

(b) it is just to do so.

(5) On application by the respondent in the representative proceeding after the day fixed under paragraph (3)(d), the Court may make such orders as are just for the payment from the fund to the respondent of the money remaining in the fund.

33ZB Effect of judgment

A judgment given in a representative proceeding:

(a) must describe or otherwise identify the group members who will be affected by it; and

(b) binds all such persons other than any person who has opted out of the proceeding under section 33J.

Authorised Version C2016C00388 registered 02/05/2016

Division 5—Appeals

33ZC Appeals to the Court

(1) The following appeals under Division 2 of Part III from a judgment of the Court in a representative proceeding may themselves be brought as representative proceedings:

(a) an appeal by the representative party on behalf of group members and in respect of the judgment to the extent that it relates to issues common to the claims of group members;

(b) an appeal by a sub-group representative party on behalf of sub-group members in respect of the judgment to the extent that it relates to issues common to the claims of sub-group members.

(2) The parties to an appeal referred to in paragraph (1)(a) are the representative party, as the representative of the group members, and the respondent.

(3) The parties to an appeal referred to in paragraph (1)(b) are the sub-group representative party, as the representative of the sub-group members, and the respondent.

(4) On an appeal by the respondent in a representative proceeding, other than an appeal referred to in subsection (5), the parties to the appeal are:

(a) in the case of an appeal in respect of the judgment generally—the respondent and the representative party as the representative of the group members; and

(b) in the case of an appeal in respect of the judgment to the extent that it relates to issues common to the claims of sub-group members—the respondent and the sub-group representative party as the representative of the sub-group members.

Authorised Version C2016C00388 registered 02/05/2016

(5) The parties to an appeal in respect of the determination of an issue that relates only to a claim of an individual group member are that group member and the respondent.

(6) If the representative party or the sub-group representative party does not bring an appeal within the time provided for instituting appeals, another member of the group or sub-group may, within a further 21 days, bring an appeal as representing the group members or sub-group members, as the case may be.

(7) Where an appeal is brought from a judgment of the Court in a representative proceeding, the Court may direct that notice of the appeal be given to such person or persons, and in such manner, as the Court thinks appropriate.

(8) Section 33J does not apply to an appeal proceeding.

(9) The notice instituting an appeal in relation to issues that are common to the claims of group members or sub-group members must describe or otherwise identify the group members or sub-group members, as the case may be, but need not specify the names or number of those members.

33ZD Appeals to the High Court—extended operation of sections 33ZC and 33ZF

(1) Sections 33ZC and 33ZF apply in relation to appeals to the High Court from judgments of the Court in representative proceedings in the same way as they apply to appeals to the Court from such judgments.

(2) Nothing in subsection (1) limits the operation of section 33 whether in relation to appeals from judgments of the Court in representative proceedings or otherwise.

Authorised Version C2016C00388 registered 02/05/2016

Division 6—Miscellaneous

33ZE Suspension of limitation periods

(1) Upon the commencement of a representative proceeding, the running of any limitation period that applies to the claim of a group member to which the proceeding relates is suspended.

(2) The limitation period does not begin to run again unless either the member opts out of the proceeding under section 33J or the proceeding, and any appeals arising from the proceeding, are determined without finally disposing of the group member's claim.

33ZF General power of Court to make orders

(1) In any proceeding (including an appeal) conducted under this Part, the Court may, of its own motion or on application by a party or a group member, make any order the Court thinks appropriate or necessary to ensure that justice is done in the proceeding.

(2) Subsection (1) does not limit the operation of section 22.

33ZG Saving of rights, powers etc.

Except as otherwise provided by this Part, nothing in this Part affects:

(a) the commencement or continuance of any action of a representative character commenced otherwise than under this Part; or

(b) the Court's powers under provisions other than this Part, for example, its powers in relation to a proceeding in which no reasonable cause of action is disclosed or that is oppressive, vexatious, frivolous or an abuse of the process of the Court; or

(c) the operation of any law relating to:

(i) vexatious litigants (however described); or

(ii) proceedings of a representative character; or

Authorised Version C2016C00388 registered 02/05/2016

(iii) joinder of parties; or
(iv) consolidation of proceedings; or
(v) security for costs.

33ZH Special provision relating to claims under Part VI of the *Competition and Consumer Act 2010* etc.

(1) For the purposes of the following provisions, a group member in a representative proceeding is to be taken to be a party to the proceeding:
(a) subsection 87(1) of the *Competition and Consumer Act 2010*;
(b) subsection 238(1) of Schedule 2 to that Act, as that subsection applies as a law of the Commonwealth.

(2) An application by a representative party in a representative proceeding under:
(a) subsection 87(1A) of the *Competition and Consumer Act 2010*; or
(b) subsection 237(1) of Schedule 2 to that Act, as that subsection applies as a law of the Commonwealth;
is to be taken to be an application by the representative party and all the group members.

33ZJ Reimbursement of representative party's costs

(1) Where the Court has made an award of damages in a representative proceeding, the representative party or a sub-group representative party, or a person who has been such a party, may apply to the Court for an order under this section.

(2) If, on an application under this section, the Court is satisfied that the costs reasonably incurred in relation to the representative proceeding by the person making the application are likely to exceed the costs recoverable by the person from the respondent, the Court may order that an amount equal to the whole or a part of the excess be paid to that person out of the damages awarded.

Authorised Version C2016C00388 registered 02/05/2016

(3) On an application under this section, the Court may also make any other order it thinks just.

Authorised Version C2016C00388 registered 02/05/2016

Part V—Registries, officers and seal

34 Registries

(1) The Governor-General shall cause such Registries of the Court to be established as he or she thinks fit, but so that at least one Registry shall be established in each State, in the Australian Capital Territory and in the Northern Territory.

(2) The Governor-General shall designate one of the Registries as the Principal Registry, and each other Registry shall be a District Registry in respect of such District as the Governor-General specifies.

(3) The Registrar must ensure that at least one Registry in each State is staffed appropriately to discharge the functions of a District Registry, with the staff to include a District Registrar in that State.

35 Officers of Court

In relation to a proceeding under this Act, the officers of the Court have such duties, powers and functions as are given by this Act or the Rules of Court or by the Chief Justice.

35A Powers of Registrars

(1) Subject to subsection (2), the following powers of the Court may, if the Court or a Judge so directs, be exercised by a Registrar:

(a) the power to dispense with the service of any process of the Court;

(b) the power to make orders in relation to substituted service;

(c) the power to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of a party to proceedings in the Court or of any other person;

(d) the power to make orders in relation to interrogatories;

Authorised Version C2016C00388 registered 02/05/2016

(e) the power, in proceedings in the Court, to make an order adjourning the hearing of the proceedings;

(f) the power to make an order as to costs;

(g) the power to make an order exempting a party to proceedings in the Court from compliance with a provision of the Rules of Court;

(h) a power of the Court prescribed by Rules of Court.

(2) A Registrar shall not exercise the powers referred to in paragraph (1)(f) except in relation to costs of or in connection with an application heard by a Registrar.

(3) The provisions of this Act and the Rules of Court that relate to the exercise by the Court of a power that is, by virtue of subsection (1), exercisable by a Registrar apply in relation to an exercise of the power by a Registrar under this section as if references in those provisions to the Court were references to the Registrar.

(4) Notwithstanding any other provision of this Act and any provision of the *Public Service Act 1999* or of any other law, a Registrar is not subject to the direction or control of any person or body in relation to the manner in which he or she exercises powers pursuant to subsection (1).

(5) A party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection (1) may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

(6) The Court may, on application under subsection (5) or of its own motion, review an exercise of power by a Registrar pursuant to this section and may make such order or orders as it thinks fit with respect to the matter with respect to which the power was exercised.

(7) Where an application for the exercise of a power referred to in subsection (1) is being heard by a Registrar and:

Authorised Version C2016C00388 registered 02/05/2016

(a) the Registrar considers that it is not appropriate for the application to be determined by a Registrar acting under this section; or

(b) an application is made to the Registrar to arrange for the first-mentioned application to be determined by the Court;

he or she shall not hear, or continue to hear, the application and shall make appropriate arrangements for the application to be heard by the Court.

(8) In this section, ***Registrar*** means the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court.

36 Seal of Court

(1) The Court shall have a seal, the design of which shall be determined by the Attorney-General.

(2) The seal of the Court shall be kept at the Principal Registry in such custody as the Chief Justice directs.

(3) The Registrar shall have in his or her custody a stamp the design of which shall, as nearly as practicable, be the same as the design of the seal of the Court, with the addition of the words "Principal Registry".

(4) The District Registrar in respect of each District Registry shall have in his or her custody a stamp the design of which shall, as nearly as practicable, be the same as the design of the seal of the Court, with the addition of such words as the Chief Justice directs for the purpose of relating the stamp to that District Registry.

(5) A document or a copy of a document marked with a stamp referred to in subsection (3) or (4) is as valid and effectual as if it had been sealed with the seal of the Court.

(6) The seal of the Court and the stamps referred to in this section shall be affixed to documents as provided by this or any other Act or by the Rules of Court.

Authorised Version C2016C00388 registered 02/05/2016

37 Writs etc.

(1) All writs, commissions and process issued from the Court shall be:

(a) under the seal of the Court; and

(b) signed (including by way of electronic signature) by the Registrar, a District Registrar or an officer acting with the authority of the Registrar or a District Registrar.

(2) For the purposes of paragraph (1)(b), a document is taken to be signed by the Registrar if the electronic signature of the Registrar is applied to the document by an officer acting with the authority of the Registrar.

(3) In this section:

electronic signature of a person means the person's unique identification in an electronic form that is approved by the Registrar.

Authorised Version C2016C00388 registered 02/05/2016

Part VAA—Suppression and non-publication orders

Division 1—Preliminary

37AA Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to a proceeding includes the complainant or victim (or alleged victim) in a criminal proceeding and any person named in evidence given in a proceeding and, in relation to a proceeding that has concluded, means a person who was a party to the proceeding before the proceeding concluded.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

(a) publication in a book, newspaper, magazine or other written publication; or
(b) broadcast by radio or television; or
(c) public exhibition; or
(d) broadcast or publication by means of the internet.

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

Authorised Version C2016C00388 registered 02/05/2016

37AB Powers of the Court not affected

This Part does not limit or otherwise affect any powers that the Court has apart from this Part to regulate its proceedings or to deal with a contempt of the Court.

37AC Other laws not affected

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

37AD No limit on section 23HC

This Part does not limit section 23HC (about protecting witnesses).

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Suppression and non-publication orders

37AE Safeguarding public interest in open justice

In deciding whether to make a suppression order or non-publication order, the Court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

37AF Power to make orders

(1) The Court may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:

(a) information tending to reveal the identity of or otherwise concerning any party to or witness in a proceeding before the Court or any person who is related to or otherwise associated with any party to or witness in a proceeding before the Court; or

(b) information that relates to a proceeding before the Court and is:

(i) information that comprises evidence or information about evidence; or

(ii) information obtained by the process of discovery; or

(iii) information produced under a subpoena; or

(iv) information lodged with or filed in the Court.

(2) The Court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

37AG Grounds for making an order

(1) The Court may make a suppression order or non-publication order on one or more of the following grounds:

(a) the order is necessary to prevent prejudice to the proper administration of justice;

Authorised Version C2016C00388 registered 02/05/2016

(b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
(c) the order is necessary to protect the safety of any person;
(d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in a criminal proceeding involving an offence of a sexual nature (including an act of indecency).

(2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

37AH Procedure for making an order

(1) The Court may make a suppression order or non-publication order on its own initiative or on the application of:
(a) a party to the proceeding concerned; or
(b) any other person considered by the Court to have a sufficient interest in the making of the order.

(2) Each of the following persons is entitled to appear and be heard by the Court on an application for a suppression order or non-publication order:
(a) the applicant for the order;
(b) a party to the proceeding concerned;
(c) the Government (or an agency of the Government) of the Commonwealth or a State or Territory;
(d) a news publisher;
(e) any other person who, in the Court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.

(3) A suppression order or non-publication order may be made at any time during a proceeding or after a proceeding has concluded.

(4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the Court thinks fit and specifies in the order.

Authorised Version C2016C00388 registered 02/05/2016

(5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

37AI Interim orders

(1) If an application is made to the Court for a suppression order or non-publication order, the Court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the Court, until the application is determined.

(2) If an order is made as an interim order, the Court must determine the application as a matter of urgency.

37AJ Duration of orders

(1) A suppression order or non-publication order operates for the period decided by the Court and specified in the order.

(2) In deciding the period for which an order is to operate, the Court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.

(3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

37AK Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

(a) in connection with the conduct of a proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or

Authorised Version C2016C00388 registered 02/05/2016

(b) in compliance with any procedure adopted by the Court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the Court.

37AL Contravention of order

(1) A person commits an offence if:

(a) the person does an act or omits to do an act; and

(b) the act or omission contravenes an order made by the Court under section 37AF.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

(2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.

(3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.

(4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.

Authorised Version C2016C00388 registered 02/05/2016

Part VAAA—Vexatious proceedings

Division 1—Preliminary

37AM Definitions

(1) In this Part:

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory.

institute, in relation to proceedings, includes:

(a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and

(b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and

(c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and

(d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

proceeding:

(a) in relation to a court—has the meaning given by section 4; and

(b) in relation to a tribunal—means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding.

Authorised Version C2016C00388 registered 02/05/2016

proceedings of a particular type includes:

(a) proceedings in relation to a particular matter; and

(b) proceedings against a particular person.

vexatious proceeding includes:

(a) a proceeding that is an abuse of the process of a court or tribunal; and

(b) a proceeding instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and

(c) a proceeding instituted or pursued in a court or tribunal without reasonable ground; and

(d) a proceeding conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

vexatious proceedings order means an order made under subsection 37AO(2).

(2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a reference to a person who is so acting as a lawyer or representative of the other person.

37AN Powers of the Court not affected

This Part does not limit or otherwise affect any powers that the Court has apart from this Part to deal with vexatious proceedings.

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Vexatious proceedings orders

37AO Making vexatious proceedings orders

(1) This section applies if the Court is satisfied:

(a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or

(b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted a vexatious proceeding in an Australian court or tribunal.

(2) The Court may make any or all of the following orders:

(a) an order staying or dismissing all or part of any proceedings in the Court already instituted by the person;

(b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Court;

(c) any other order the Court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.

(3) The Court may make a vexatious proceedings order on its own initiative or on the application of any of the following:

(a) the Attorney-General of the Commonwealth or of a State or Territory;

(b) the Registrar of the Court;

(c) a person against whom another person has instituted or conducted a vexatious proceeding;

(d) a person who has a sufficient interest in the matter.

(4) The Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

Authorised Version C2016C00388 registered 02/05/2016

(5) An order made under paragraph (2)(a) or (b) is a final order.

(6) For the purposes of subsection (1), the Court may have regard to:
   (a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal; and
   (b) orders made by any Australian court or tribunal; and
   (c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal);

including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

37AP Notification of vexatious proceedings orders

(1) A person may request the Registrar of the Court for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order.

(2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order, the Registrar must issue to the person making the request a certificate:
   (a) specifying the date of the order; and
   (b) specifying any other information prescribed by the Rules of Court.

(3) This section is subject to any law of the Commonwealth, or order of the Court, restricting the publication or disclosure of the name of a party to proceedings in the Court.

Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of Commonwealth records.

Authorised Version C2016C00388 registered 02/05/2016

Division 3—Particular consequences of vexatious proceedings orders

37AQ Proceedings in contravention of vexatious proceedings order

(1) If the Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in the Court:

(a) the person must not institute proceedings, or proceedings of that type, in the Court without the leave of the Court under section 37AT; and

(b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the Court without the leave of the Court under section 37AT.

(2) If a proceeding is instituted in contravention of subsection (1), the proceeding is stayed.

(3) Without limiting subsection (2), the Court may make:

(a) an order declaring a proceeding is a proceeding to which subsection (2) applies; and

(b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.

(4) The Court may make an order under subsection (3) on its own initiative or on the application of any of the following:

(a) the Attorney-General of the Commonwealth or of a State or Territory;

(b) the Registrar of the Court;

(c) a person against whom another person has instituted or conducted a vexatious proceeding;

(d) a person who has a sufficient interest in the matter.

Authorised Version C2016C00388 registered 02/05/2016

37AR Application for leave to institute proceedings

(1) This section applies to a person (the ***applicant***) who is:

(a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Court; or

(b) acting in concert with another person who is subject to an order mentioned in paragraph (a).

(2) The applicant may apply to the Court for leave to institute a proceeding that is subject to the order.

(3) The applicant must file an affidavit with the application that:

(a) lists all the occasions on which the applicant has applied for leave under this section; and

(b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of this section; and

(c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.

(4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under paragraph 37AT(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

37AS Dismissing application for leave

(1) The Court or a Judge may make an order dismissing an application under section 37AR for leave to institute a proceeding if the Court or Judge considers the affidavit does not substantially comply with subsection 37AR(3).

(2) The Court or a Judge must make an order dismissing an application under section 37AR for leave to institute a proceeding if the Court or Judge considers the proceeding is a vexatious proceeding.

Authorised Version C2016C00388 registered 02/05/2016

(3) The Court or a Judge may dismiss the application without an oral hearing (either with or without the consent of the applicant).

37AT Granting application for leave

(1) Before the Court makes an order granting an application under section 37AR for leave to institute a proceeding, it must:

(a) order that the applicant serve:

(i) the person against whom the applicant proposes to institute the proceeding; and

(ii) any other person specified in the order;

with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application; and

(b) give the applicant and each person described in subparagraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.

(2) At the hearing of the application, the Court may receive as evidence any record of evidence given, or affidavit filed, in any proceeding in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.

(3) The Court may make an order granting the application. The order may be made subject to the conditions the Court considers appropriate.

(4) The Court may grant leave only if it is satisfied the proceeding is not a vexatious proceeding.

Authorised Version C2016C00388 registered 02/05/2016

Part VA—Assessors

37A Appointment of assessors

(1) There are to be assessors to assist the Court in the exercise of its jurisdiction under the *Native Title Act 1993*.

(2) The assessors are to be appointed by the Governor-General.

(3) An assessor must be appointed either as a full-time assessor or as a part-time assessor.

(4) As far as is practicable, persons appointed as assessors are to be selected from Aboriginal peoples or Torres Strait Islanders.

37B Qualifications for appointment

A person is not to be appointed as an assessor unless the person has, in the opinion of the Governor-General, special knowledge in relation to:

(a) Aboriginal or Torres Strait Islander societies; or

(b) land management; or

(c) dispute resolution; or

(d) any other class of matters considered by the Governor-General to have substantial relevance to the duties of an assessor.

37C Remuneration and allowances

(1) An assessor is to be paid the remuneration determined by the Remuneration Tribunal. If there is no determination in force, the assessor is to be paid such remuneration as is prescribed.

(2) An assessor is to be paid such allowances as are prescribed.

(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

Authorised Version C2016C00388 registered 02/05/2016

37D Terms and conditions of appointment

(1) An assessor is appointed for the period (not longer than 5 years) specified in the instrument of appointment, but is eligible for reappointment.

(3) An assessor holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are prescribed.

37E Oath or affirmation of office

A person who is appointed or re-appointed as an assessor must, before beginning to discharge the duties of the office, take, before the Chief Justice or a Judge of the Court, an oath or affirmation in the following form:

"I, ..., do swear that I will well and truly serve in the office of assessor and that I will do right to all manner of people according to law, without fear or favour, affection or ill will, So Help Me God!"

Or

"I, ..., do solemnly and sincerely promise and declare that (*as above, omitting the words 'So Help Me God'*).".

37F Leave of absence

(1) A full-time assessor has the recreation leave entitlements determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time assessor leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

37G Resignation

An assessor may resign by giving a signed notice of resignation to the Governor-General.

Authorised Version C2016C00388 registered 02/05/2016

37H Termination of appointment—bankruptcy etc.

The Governor-General must terminate the appointment of an assessor if the assessor:

(a) becomes bankrupt; or

(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) compounds with his or her creditors; or

(d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

37I Termination of appointment—misbehaviour or incapacity

(1) The Governor-General may terminate the appointment of an assessor if an address praying for the termination of the assessor's appointment, on the ground of proved misbehaviour or of physical or mental incapacity, is presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

(2) The Governor-General may, with the consent of an assessor who is:

(a) an eligible employee for the purposes of the *Superannuation Act 1976*; or

(b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or

(c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

retire the assessor from office on the ground of incapacity.

(3) In spite of anything contained in this Act, an assessor who:

(a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and

(b) has not reached his or her retiring age (within the meaning of that Act);

is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.

Authorised Version C2016C00388 registered 02/05/2016

(4) In spite of anything contained in this Act, an assessor who:

(a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

(5) In spite of anything contained in this Act, an assessor who:

(a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and

(b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

37J Suspension of assessors—misbehaviour or incapacity

(1) The Governor-General may suspend an assessor from office on the ground of misbehaviour or of physical or mental incapacity.

(2) If the Governor-General suspends an assessor from office, the Minister must cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

(3) If such a statement is laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement is laid before it, by resolution, declare that the assessor's appointment should be terminated.

(4) If each House of the Parliament passes the resolution in that way, the Governor-General must terminate the assessor's appointment.

(5) If, at the end of 15 sitting days of a House of the Parliament after the day on which the statement is laid before that House, that House has not passed the resolution, the suspension terminates.

Authorised Version C2016C00388 registered 02/05/2016

(6) The suspension of an assessor from office under this section does not affect any entitlement of the assessor to be paid remuneration and allowances.

37K Outside employment

(1) Except with the consent of the Minister, a full-time assessor must not engage in paid employment outside the duties of his or her office.

(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

Note: An assessor will be taken to be performing the functions of his or her office as assessor if he or she is performing the functions of a member of the National Native Title Tribunal.

37L Disclosure of interests

(1) An assessor who has a conflict of interest in relation to proceedings must disclose the matters giving rise to that conflict to the Chief Justice and the parties.

(2) The assessor must not take part in the proceedings or exercise any powers in relation to the proceedings unless the Chief Justice consents.

(3) For the purposes of this section, an assessor has a conflict of interest in relation to proceedings if the assessor has any interest, pecuniary or otherwise, that could conflict with the proper performance of the assessor's functions in relation to the proceedings.

Authorised Version C2016C00388 registered 02/05/2016

Part VB—Case management in civil proceedings

37M The overarching purpose of civil practice and procedure provisions

(1) The overarching purpose of the civil practice and procedure provisions is to facilitate the just resolution of disputes:
  (a) according to law; and
  (b) as quickly, inexpensively and efficiently as possible.

(2) Without limiting the generality of subsection (1), the overarching purpose includes the following objectives:
  (a) the just determination of all proceedings before the Court;
  (b) the efficient use of the judicial and administrative resources available for the purposes of the Court;
  (c) the efficient disposal of the Court's overall caseload;
  (d) the disposal of all proceedings in a timely manner;
  (e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.

(3) The civil practice and procedure provisions must be interpreted and applied, and any power conferred or duty imposed by them (including the power to make Rules of Court) must be exercised or carried out, in the way that best promotes the overarching purpose.

(4) The ***civil practice and procedure provisions*** are the following, so far as they apply in relation to civil proceedings:
  (a) the Rules of Court made under this Act;
  (b) any other provision made by or under this Act or any other Act with respect to the practice and procedure of the Court.

37N Parties to act consistently with the overarching purpose

(1) The parties to a civil proceeding before the Court must conduct the proceeding (including negotiations for settlement of the dispute to

Authorised Version C2016C00388 registered 02/05/2016

which the proceeding relates) in a way that is consistent with the overarching purpose.

(2) A party's lawyer must, in the conduct of a civil proceeding before the Court (including negotiations for settlement) on the party's behalf:

(a) take account of the duty imposed on the party by subsection (1); and

(b) assist the party to comply with the duty.

(3) The Court or a Judge may, for the purpose of enabling a party to comply with the duty imposed by subsection (1), require the party's lawyer to give the party an estimate of:

(a) the likely duration of the proceeding or part of the proceeding; and

(b) the likely amount of costs that the party will have to pay in connection with the proceeding or part of the proceeding, including:

(i) the costs that the lawyer will charge to the party; and

(ii) any other costs that the party will have to pay in the event that the party is unsuccessful in the proceeding or part of the proceeding.

(4) In exercising the discretion to award costs in a civil proceeding, the Court or a Judge must take account of any failure to comply with the duty imposed by subsection (1) or (2).

(5) If the Court or a Judge orders a lawyer to bear costs personally because of a failure to comply with the duty imposed by subsection (2), the lawyer must not recover the costs from his or her client.

37P Power of the Court to give directions about practice and procedure in a civil proceeding

(1) This section applies in relation to a civil proceeding before the Court.

Authorised Version C2016C00388 registered 02/05/2016

(2) The Court or a Judge may give directions about the practice and procedure to be followed in relation to the proceeding, or any part of the proceeding.

(3) Without limiting the generality of subsection (2), a direction may:
  (a) require things to be done; or
  (b) set time limits for the doing of anything, or the completion of any part of the proceeding; or
  (c) limit the number of witnesses who may be called to give evidence, or the number of documents that may be tendered in evidence; or
  (d) provide for submissions to be made in writing; or
  (e) limit the length of submissions (whether written or oral); or
  (f) waive or vary any provision of the Rules of Court in their application to the proceeding; or
  (g) revoke or vary an earlier direction.

(4) In considering whether to give directions under subsection (2), the Court may also consider whether to make an order under subsection 53A(1).

(5) If a party fails to comply with a direction given by the Court or a Judge under subsection (2), the Court or Judge may make such order or direction as the Court or Judge thinks appropriate.

(6) In particular, the Court or Judge may do any of the following:
  (a) dismiss the proceeding in whole or in part;
  (b) strike out, amend or limit any part of a party's claim or defence;
  (c) disallow or reject any evidence;
  (d) award costs against a party;
  (e) order that costs awarded against a party are to be assessed on an indemnity basis or otherwise.

(7) Subsections (5) and (6) do not affect any power that the Court or a Judge has apart from those subsections to deal with a party's failure to comply with a direction.

Authorised Version C2016C00388 registered 02/05/2016

Part VI—General

38 Practice and procedure

(1) Subject to any provision made by or under this or any other Act with respect to practice and procedure, the practice and procedure of the Court shall be in accordance with Rules of Court made under this Act.

(2) In so far as the provisions for the time being applicable in accordance with subsection (1) are insufficient, the Rules of the High Court, as in force for the time being, apply, *mutatis mutandis*, so far as they are capable of application and subject to any directions of the Court or a Judge, to the practice and procedure of the Court.

(3) In this section, ***practice and procedure*** includes all matters in relation to which Rules of Court may be made under this Act.

39 Civil trials to be without jury

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

40 Power of Court in civil proceedings to direct trial of issues with a jury

The Court or a Judge 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 or Judge thinks necessary, and upon the finding of the jury the Court may give such decision and pronounce such judgment as the case requires.

Authorised Version C2016C00388 registered 02/05/2016

41 Juries in civil proceedings

(1) Subject to this section 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 panels;

(c) the summoning, attendance and empanelling of juries;

(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

(i) other matters concerning jurors after they have been summoned, appointed, sworn or affirmed;

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 proceedings in which a trial is had with a jury in the Court in that State or Territory, and for the purposes of such a trial 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 Court.

(2) The precept for a jury referred to in subsection (1) shall be issued by the Registrar or such other officer of the Court as the Court or a Judge directs, and the Sheriff shall prepare the jury panels and summon jurors.

(3) The amounts required for the remuneration of jurors in accordance with this section are payable out of moneys provided by the Parliament.

43 Costs

(1) The Court or a Judge has jurisdiction to award costs in all proceedings before the Court (including proceedings dismissed for want of jurisdiction) other than proceedings in respect of which

Authorised Version C2016C00388 registered 02/05/2016

this or any other Act provides that costs must not be awarded. This is subject to:

(a) subsection (1A); and

(b) section 570 of the *Fair Work Act 2009*; and

(c) section 18 of the *Public Interest Disclosure Act 2013*.

(1A) In a representative proceeding commenced under Part IVA or a proceeding of a representative character commenced under any other Act that authorises the commencement of a proceeding of that character, the Court or Judge may not award costs against a person on whose behalf the proceeding has been commenced (other than a party to the proceeding who is representing such a person) except as authorised by:

(a) in the case of a representative proceeding commenced under Part IVA—section 33Q or 33R; or

(b) in the case of a proceeding of a representative character commenced under another Act—any provision in that Act.

(2) Except as provided by any other Act, the award of costs is in the discretion of the Court or Judge.

(3) Without limiting the discretion of the Court or a Judge in relation to costs, the Court or Judge may do any of the following:

(a) make an award of costs at any stage in a proceeding, whether before, during or after any hearing or trial;

(b) make different awards of costs in relation to different parts of the proceeding;

(c) order the parties to bear costs in specified proportions;

(d) award a party costs in a specified sum;

(e) award costs in favour of or against a party whether or not the party is successful in the proceeding;

(f) order a party's lawyer to bear costs personally;

(g) order that costs awarded against a party are to be assessed on an indemnity basis or otherwise;

(h) do any of the following in proceedings in relation to discovery:

Authorised Version C2016C00388 registered 02/05/2016

(i) order the party requesting discovery to pay in advance for some or all of the estimated costs of discovery;

(ii) order the party requesting discovery to give security for the payment of the cost of discovery;

(iii) make an order specifying the maximum cost that may be recovered for giving discovery or taking inspection.

Note: For further provision about the award of costs, see subsections 37N(4) and (5) and paragraphs 37P(6)(d) and (e).

44 Oaths and affirmations

(1) A Judge may require and administer all necessary oaths and affirmations.

(2) The Registrar may, by writing signed by him or her, authorise:

(a) a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court; or

(b) a member of the Staff of a Registry of the Court;

to administer oaths and affirmations for the purposes of the Court.

45 Making of affidavits

(1) An affidavit to be used in a proceeding in the Court may be sworn or affirmed within the Commonwealth or a Territory before:

(a) a Judge of the Court, the Registrar, a Deputy Registrar, a District Registrar, a justice of the peace or a commissioner for declarations; or

(b) a person not mentioned in paragraph (a) who is authorised to administer oaths and affirmations for the purposes of the Court or for the purposes of the High Court or the Supreme Court of a State or Territory.

(2) An affidavit to be used in a proceeding in the Court may be sworn or affirmed at a place outside the Commonwealth and the Territories before:

Authorised Version C2016C00388 registered 02/05/2016

(a) a Commissioner of the High Court authorized to administer oaths and affirmations in that place for the purposes of the High Court; or

(c) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, exercising his or her function in that place; or

(ca) an employee of the Commonwealth who is:

(i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and

(ii) exercising his or her function in that place; or

(cb) an employee of the Australian Trade and Investment Commission who is:

(i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and

(ii) exercising his or her function in that place; or

(d) a notary public exercising his or her function in that place; or

(e) a person qualified to administer an oath or affirmation in that place, being a person certified by the person mentioned in any of paragraphs (b), (c), (ca), (cb) and (d), or by the superior court of that place to be so qualified.

(3) An affidavit sworn or affirmed outside the Commonwealth and the Territories otherwise than before a person referred to in subsection (2) may be used in a proceeding in the Court in circumstances provided by the Rules of Court.

46 Orders and commissions for examination of witnesses

The Court or a Judge may, for the purposes of any proceeding before it or him or her:

(a) order the examination of a person upon oath or affirmation before the Court, a Judge, an officer of the Court or other 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 on oath or affirmation of a person;

and the Court or a Judge may:

Authorised Version C2016C00388 registered 02/05/2016

(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 proceeding to give in evidence in the proceeding the testimony so taken on such terms (if any) as the Court or Judge directs.

Note: Proceedings include incidental proceedings, such as discovery (see the definition of ***proceeding*** in section 4).

47 Oral, video link, telephone and affidavit evidence

Civil proceedings other than trials of causes

(1) In a civil proceeding, not being the trial of a cause, testimony shall be given by affidavit or as otherwise directed or allowed by the Court or a Judge.

Note: For testimony etc. by video link, audio link or other appropriate means, see sections 47A to 47F.

Civil trials of causes

(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 Court or a Judge may at any time, for sufficient reason and on such conditions (if any) as the Court or Judge thinks necessary in the interests of justice, direct or allow proof by affidavit at the trial of a cause to such extent as the Court or Judge thinks fit.

(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 such cross-examination or the Court, in its discretion, permits the affidavit to be used without the person so appearing.

Authorised Version C2016C00388 registered 02/05/2016

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

(6) Subject to this section and section 47A and without prejudice to any other law that would, if this subsection had not been enacted, expressly permit any testimony to be otherwise given, testimony at the trial of causes shall be given orally in court.

Note: For testimony etc. by video link, audio link or other appropriate means, see sections 47A to 47F.

(7) Subsections (1) to (6) do not apply in relation to criminal proceedings.

Criminal proceedings

(8) Testimony in criminal proceedings must be given orally unless:

(a) the testimony is given in another form:

(i) agreed to between the parties; and

(ii) to which the Court does not object; or

(b) the testimony is given in accordance with this or any other Act, or with any law applying under subsection 68(1) of the *Judiciary Act 1903* in relation to the proceedings.

Note: For testimony etc. by video link, audio link or other appropriate means, see sections 47A to 47F.

47A Testimony by video link, audio link or other appropriate means

(1) The Court or a Judge may, for the purposes of any proceeding, direct or allow testimony to be given by video link, audio link or other appropriate means.

Note: See also section 47C.

(2) The testimony must be given on oath or affirmation unless:

(a) the person giving the testimony is in a foreign country; and

(b) either:

(i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceeding; or

Authorised Version C2016C00388 registered 02/05/2016

(ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceeding; and

(c) the Court or the Judge is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.

(3) If the testimony is given:

(a) otherwise than on oath or affirmation; and

(b) in proceedings where there is not a jury;

the Court or the Judge is to give the testimony such weight as the Court or the Judge thinks fit in the circumstances.

Note: In proceedings where there is a jury, the Judge may warn the jury about the testimony (see section 165 of the *Evidence Act 1995*).

(4) The power conferred on the Court or a Judge by subsection (1) may be exercised:

(a) on the application of a party to the proceedings; or

(b) on the Court's or Judge's own initiative.

(5) This section applies whether the person giving testimony is in or outside Australia, but does not apply if the person giving testimony is in New Zealand.

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

47B Appearances or submissions by video link, audio link or other appropriate means

(1) The Court or a Judge may, for the purposes of any proceeding, direct or allow a person:

(a) to appear before the Court or the Judge; or

(b) to make a submission to the Court or the Judge;

by way of video link, audio link or other appropriate means.

Note: See also section 47C.

(2) The power conferred on the Court or a Judge by subsection (1) may be exercised:

(a) on the application of a party to the proceedings; or

Authorised Version C2016C00388 registered 02/05/2016

(b) on the Court's or Judge's own initiative.

(3) This section applies whether the person appearing or making the submission is in or outside Australia, but does not apply if the person appearing or making the submission is in New Zealand.

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

47C Conditions for use of video links, audio links or other appropriate means

Video link

(1) The Court or a Judge must not exercise the power conferred by subsection 47A(1) or section 47B in relation to a video link unless the Court or the Judge is satisfied that the following conditions are met in relation to the video link:

(a) the courtroom or other place where the Court or the Judge is sitting is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom or place to see and hear the person (the ***remote person***) who is:

(i) giving the testimony; or

(ii) appearing; or

(iii) making the submission;

by way of the video link;

(b) the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each eligible person who is present in the courtroom or other place where the Court or the Judge is sitting;

(c) such other conditions (if any) as are prescribed by the Rules of Court in relation to the video link;

(d) such other conditions (if any) as are imposed by the Court or the Judge.

(2) The conditions that may be prescribed by the Rules of Court in accordance with paragraph (1)(c) include conditions relating to:

Authorised Version C2016C00388 registered 02/05/2016

(a) the form of the video link; and
(b) the equipment, or class of equipment, used to establish the link; and
(c) the layout of cameras; and
(d) the standard of transmission; and
(e) the speed of transmission; and
(f) the quality of communication.

Audio link

(3) The Court or a Judge must not exercise the power conferred by subsection 47A(1) or section 47B in relation to an audio link unless the Court or the Judge is satisfied that the following conditions are met in relation to the audio link:
(a) the courtroom or other place where the Court or the Judge is sitting is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom or place to hear the person (the ***remote person***) who is:
(i) giving the testimony; or
(ii) appearing; or
(iii) making the submission;
by way of the audio link;
(b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the Court or the Judge is sitting;
(c) such other conditions (if any) as are prescribed by the Rules of Court in relation to the audio link;
(d) such other conditions (if any) as are imposed by the Court or the Judge.

(4) The conditions that may be prescribed by the Rules of Court in accordance with paragraph (3)(c) include conditions relating to:
(a) the form of the audio link; and

Authorised Version C2016C00388 registered 02/05/2016

(b) the equipment, or class of equipment, used to establish the audio link; and
(c) the standard of transmission; and
(d) the speed of transmission; and
(e) the quality of communication.

Other appropriate means

(5) The Court or a Judge must not exercise the power conferred by subsection 47A(1) or section 47B in relation to an appropriate means other than video link or audio link unless the Court or the Judge is satisfied that the following conditions are met in relation to that means:
(a) the conditions (if any) as are prescribed by the Rules of Court in relation to that means;
(b) such other conditions (if any) as are imposed by the Court or the Judge.

Eligible persons

(6) For the purposes of the application of this section to a particular proceeding, ***eligible persons*** are such persons as the Court or a Judge considers should be treated as eligible persons for the purposes of that proceeding.

47D Putting documents to a person by video link, audio link or other appropriate means

If, in the course of an examination or appearance of a person by video link, audio link or other appropriate means in accordance with this Part, it is necessary to put a document to the person, the Court or a Judge may direct or allow the document to be put to the person:
(a) if the document is physically present in the courtroom or other place where the Court or the Judge is sitting:
(i) by causing a copy of the document to be transmitted to the place where the person is located; and

Authorised Version C2016C00388 registered 02/05/2016

(ii) by causing the transmitted copy to be put to the person; or

(b) if the document is physically present in the place where the person is located:

(i) by causing the document to be put to the person; and

(ii) by causing a copy of the document to be transmitted to the courtroom or other place where the Court or the Judge is sitting.

47E Administration of oaths and affirmations

An oath to be sworn, or an affirmation to be made, by a person (the ***remote person***) who is to give testimony by video link, audio link or other appropriate means in accordance with this Part may be administered:

(a) by means of the video link, audio link or other appropriate means in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the Court or the Judge is sitting; or

(b) if the Court or the Judge allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by that other person.

47F Expenses

(1) The Court or a Judge may make such orders as the Court or the Judge thinks just for the payment of expenses incurred in connection with:

(a) the giving of testimony by video link, audio link or other appropriate means in accordance with this Part; or

(b) the appearance of a person by video link, audio link or other appropriate means in accordance with this Part; or

(c) the making of submissions by video link, audio link or other appropriate means in accordance with this Part.

Authorised Version C2016C00388 registered 02/05/2016

(2) Subsection (1) has effect subject to the regulations.

47G New Zealand proceedings

Sections 47A to 47F do not affect the operation of the *Trans-Tasman Proceedings Act 2010*.

48 Change of venue

(1) The Court or a Judge may, at any stage of a proceeding in the Court, direct that the proceeding or a part of the proceeding be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Court or Judge imposes.

(2) Subject to section 80 of the Constitution and sections 68C, 70 and 70A of the *Judiciary Act 1903*, subsection (1) extends to criminal proceedings.

49 Reserved judgments

(1) This section applies where judgment is reserved in any proceeding before the Court.

(2) If a Judge who heard the proceeding, whether as a single Judge or as a member of a Full Court:

(a) prepares his or her judgment; but

(b) is not available to publish the judgment;

the judgment may be made public by another Judge authorised to do so by the Judge whose judgment it is.

(3) A judgment made public in accordance with subsection (2) has the same effect as it would have if it were made public by the Judge whose judgment it is.

51 Formal defects not to invalidate

(1) No proceedings in the Court are invalidated by a formal defect or an irregularity, unless the Court is of opinion that substantial

Authorised Version C2016C00388 registered 02/05/2016

injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by an order of the Court.

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

51A Interest up to judgment

(1) In any proceedings 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 Court or a Judge 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 or the Judge, as the case may be, thinks fit on the whole or any part of the money for the whole or any 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;

(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.

Authorised Version C2016C00388 registered 02/05/2016

(3) Where the sum for which judgment is given (in this subsection referred to as ***the relevant sum***) includes, or where the Court in its absolute discretion, or a Judge in that Judge's 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 or the Judge 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 applicant, as from the date upon which that liability was so met.

52 Interest on judgment

(1) A judgment debt under a judgment of the Court carries interest from the date as of which the judgment is entered.

(2) Interest is payable:

(a) at such rate as is fixed by the Rules of Court; or

(b) if the Court, in a particular case, thinks that justice so requires—at such lower rate as the Court determines.

53 Enforcement of judgment

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

Authorised Version C2016C00388 registered 02/05/2016

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 Court.

53A Arbitration, mediation and alternative dispute resolution processes

(1) The Court may, by order, refer proceedings in the Court, or any part of them or any matter arising out of them:

(a) to an arbitrator for arbitration; or

(b) to a mediator for mediation; or

(c) to a suitable person for resolution by an alternative dispute resolution process;

in accordance with the Rules of Court.

(1AA) Subsection (1) is subject to the Rules of Court.

(1A) Referrals under subsection (1) (other than to an arbitrator) may be made with or without the consent of the parties to the proceedings. Referrals to an arbitrator may be made only with the consent of the parties.

(2) The Rules of Court may make provision for the registration of awards made in an arbitration carried out under an order made under subsection (1).

(3) This section does not apply to criminal proceedings.

53AA Power of arbitrator to refer question of law to the Court

(1) If:

(a) any proceedings in the Court, or any part of them or any matter arising out of them, has been referred under subsection 53A(1) to an arbitrator for arbitration; and

(b) the arbitrator has not made an award in respect of the arbitration; and

Authorised Version C2016C00388 registered 02/05/2016

(c) a party to the arbitration has requested the arbitrator to apply to the Court for leave to refer to the Court a question of law arising in the arbitration;

the arbitrator may apply to the Court or a Judge for leave to refer the question to the Court.

(2) If the Chief Justice considers that the matter to which the application for leave relates is of sufficient importance to justify the giving of a direction under this subsection, the Chief Justice may direct that the jurisdiction of the Court in that matter is to be exercised by a Full Court.

(3) The Court or Judge must not grant leave unless satisfied that the determination of the question of law by the Court might result in substantial savings in costs to the parties to the arbitration.

53AB Application to the Court for review of award on a question of law or for costs to be taxed

(1) If:

(a) any proceedings in the Court, or any part of them or any matter arising out of them, has been referred under subsection 53A(1) to an arbitrator for arbitration; and

(b) the arbitrator has made an award in respect of the arbitration; and

(c) the award has been registered with the Court under the Rules of Court;

the following provisions of this section apply.

(2) A party to the award may apply to the Court for a review, on a question of law, of the award.

(3) If the Chief Justice considers that the matter to which an application made under subsection (2) relates is of sufficient importance to justify the giving of a direction under this subsection, the Chief Justice may direct that the jurisdiction of the Court in that matter is to be exercised by a Full Court.

Authorised Version C2016C00388 registered 02/05/2016

(4) On a review of an award on a question of law, the Court may:
  (a) determine the question of law; and
  (b) make such orders as it thinks appropriate, including:
    (i) an order affirming the award; or
    (ii) an order varying the award; or
    (iii) an order setting aside the award and remitting the award to the arbitrator for reconsideration in accordance with the directions of the Court; or
    (iv) an order setting aside the award and determining the matter to which the award related.

(5) A party to the award may apply to the Court or a Judge for an order that the costs payable by the party in respect of the arbitration be taxed in accordance with the Rules of Court.

(6) The person who made the application is not liable to pay in respect of the costs of the arbitration an amount that is more than the amount of the costs as taxed under an order made under subsection (5).

53B Admissions made to mediators

Evidence of anything said, or of any admission made, at a conference conducted by a mediator in the course of mediating anything referred under section 53A is not admissible:
  (a) in any court (whether exercising federal jurisdiction or not); or
  (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.

53C Protection of mediators and arbitrators

A mediator or an arbitrator has, in mediating or arbitrating anything referred under section 53A, the same protection and immunity as a Judge has in performing the functions of a Judge.

Authorised Version C2016C00388 registered 02/05/2016

54 Arbitration awards

(1) The Court may, upon application by a party to an award made in an arbitration (whether carried out under an order made under section 53A or otherwise) in relation to a matter in which the Court has original jurisdiction, make an order in the terms of the award.

(1A) Subsection (1) does not apply to an award made in an arbitration carried out under an order made under subsection 53A(1) unless the award has been registered with the Court under the Rules of Court.

(2) Subject to subsection (3), an order so made is enforceable in the same manner as if it had been made in an action in the Court.

(3) A writ of attachment shall not be issued to enforce payment of moneys under an order made in accordance with this section.

54A Referral of questions to a referee

(1) Subject to the Rules of Court, the Court may by order refer:

(a) a proceeding in the Court; or

(b) one or more questions arising in a proceeding in the Court;

to a referee for inquiry and report in accordance with the Rules of Court.

(2) A referral under subsection (1) may be made at any stage of a proceeding.

(3) If a report of a referee under subsection (1) is provided to the Court, the Court may deal with the report as it thinks fit, including by doing the following:

(a) adopting the report in whole or in part;

(b) varying the report;

(c) rejecting the report;

(d) making such orders as the Court thinks fit in respect of any proceeding or question referred to the referee.

Authorised Version C2016C00388 registered 02/05/2016

54B Protection of referees

A referee has, in inquiring or reporting on a proceeding or question referred under section 54A, the same protection and immunity as a Judge has in performing the functions of a Judge.

55 Actions by or against Sheriff

If the Sheriff or a Deputy Sheriff is a party to a proceeding in the Court, all writs, summonses, orders, warrants, precepts, process and commands in the proceeding which should, in the ordinary course, be directed to the Sheriff shall be directed to such disinterested person as the Court or a Judge, appoints and the person so appointed may execute and return them.

55A Making arrests under this Act or warrants

Application

(1) This section applies to any of the following persons (the ***arrester***) who is authorised by this Act, or a warrant issued under this Act or the Rules of Court, to arrest another person (the ***arrestee***):

(a) the Sheriff of the Court;

(b) a Deputy Sheriff of the Court;

(c) the Sheriff of a court of a State or Territory;

(d) a Deputy Sheriff of a court of a State or Territory;

(e) a police officer.

Power to enter premises

(2) If the arrester reasonably believes the arrestee is on premises, the arrester may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the arrestee or arresting the arrestee.

(3) However, the arrester must not enter a dwelling house between 9 pm one day and 6 am the next day unless he or she reasonably

Authorised Version C2016C00388 registered 02/05/2016

believes that it would not be practicable to arrest the arrestee there or elsewhere at another time.

Use of force

(4) In the course of arresting the arrestee, the arrester:

(a) must not use more force, or subject the arrestee to greater indignity, than is necessary and reasonable to make the arrest or to prevent the arrestee's escape after the arrest; and

(b) must not do anything that is likely to cause the death of, or grievous bodily harm to, the arrestee unless the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and

(c) if the arrestee is attempting to escape arrest by fleeing—must not do a thing described in paragraph (b) unless:

(i) the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and

(ii) the arrestee has, if practicable, been called on to surrender and the arrester reasonably believes that the arrestee cannot be arrested in any other way.

Informing the arrestee of grounds for arrest

(5) When arresting the arrestee, the arrester must inform the arrestee of the grounds for the arrest.

(6) It is sufficient if the arrestee is informed of the substance of those grounds, not necessarily in precise or technical language.

(7) Subsection (5) does not apply if:

(a) the arrestee should, in the circumstances, know the substance of the grounds for the arrest; or

(b) the arrestee's actions make it impracticable for the arrester to inform the arrestee of those grounds.

Authorised Version C2016C00388 registered 02/05/2016

56 Security

(1) The Court or a Judge may order an applicant in a proceeding in the Court, or an appellant in an appeal under Division 2 of Part III, to give security for the payment of costs that may be awarded against him or her.

(2) The security shall be of such amount, and given at such time and in such manner and form, as the Court or Judge directs.

(3) The Court or a Judge may reduce or increase the amount of security ordered to be given and may vary the time at which, or manner or form in which, the security is to be given.

(4) If security, or further security, is not given in accordance with an order under this section, the Court or a Judge may order that the proceeding or appeal be dismissed.

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

57 Receivers

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

(2) A receiver of any property appointed by the Court may, without the previous leave of the Court, be sued in respect of an act or transaction done or entered into by him or her in carrying on the business connected with the property.

(3) When in any cause pending in the Court a receiver appointed by the Court is in possession of property, the receiver 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.

Authorised Version C2016C00388 registered 02/05/2016

58 Offences by witness

(1) A person duly served with a summons to appear as a witness before the Court shall not:

(a) fail to attend as required by the summons; or

(b) fail to appear and report himself or herself from day to day unless excused, or released from further attendance, by the Court.

Penalty: Imprisonment for 6 months.

(1A) Subsection (1) is an offence of strict liability.

Note: For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) A person appearing as a witness before the Court shall not:

(a) refuse or fail to be sworn or to make an affirmation;

(b) refuse or fail to answer a question that he or she is required by the Court to answer; or

(c) refuse or fail to produce a book or document that he or she is required by the Court or by a summons issued from the Court to produce.

Penalty: Imprisonment for 6 months.

(2A) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2A) (see subsection 13.3(3) of the *Criminal Code*).

(3) Nothing in this section limits the power of the Court to punish persons for contempt of the Court, but a person shall not be punished under this section and for contempt of the Court in respect of the same act or omission.

Authorised Version C2016C00388 registered 02/05/2016

Part VIA—Offences relating to juries

Division 1—Offences

58AA Failing to attend for jury service

(1) A person commits an offence if:

(a) the person has been served with a summons under:

(i) section 23DP; or

(ii) a law applying under subsection 41(1); and

(b) the summons has not been withdrawn; and

(c) the person has not been excused from serving as a juror in the proceedings to which the summons relates; and

(d) the person fails to attend for service as a juror in accordance with the summons.

Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

58AB Failing to comply with directions—persons attending for jury service

Criminal trials

(1) A person commits an offence if:

(a) the person is a potential juror in relation to indictable primary proceedings; and

(b) the person attends for service as a juror; and

Authorised Version C2016C00388 registered 02/05/2016

(c) the person has not been discharged under section 23EI; and
(d) the person is given a direction by the Sheriff or the Court; and
(e) the person fails to comply with the direction.

Penalty: 30 penalty units.

Civil trials

(2) A person commits an offence if:
(a) the person is a potential juror in relation to civil proceedings before the Court; and
(b) the person attends for service as a juror; and
(c) the person has not been discharged under a law applying under subsection 41(1); and
(d) the person is given a direction by the Sheriff or the Court; and
(e) the person fails to comply with the direction.

Penalty: 30 penalty units.

(3) Subsections (1) and (2) are offences of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) Subsections (1) and (2) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4)—see subsection 13.3(3) of the *Criminal Code*.

58AC Failing to comply with directions—jurors

(1) A person commits an offence if:
(a) the person is a juror; and
(b) neither the jury nor the juror has been discharged; and
(c) the person is given a direction by the Sheriff or the Court; and
(d) the person fails to comply with the direction.

Authorised Version C2016C00388 registered 02/05/2016

Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

58AD Impersonating a juror or potential juror

(1) A person commits an offence if:
(a) the person impersonates another person; and
(b) the first-mentioned person does so with the intent of:
(i) being empanelled as a juror; or
(ii) causing the other person to be excused from serving as a juror.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:
(a) the person impersonates another person; and
(b) the first-mentioned person does so with the intent of:
(i) acting as a juror; or
(ii) causing the other person to be discharged from serving as a juror.

Penalty: Imprisonment for 2 years.

58AE Failing to complete and return a questionnaire

(1) A person commits an offence if:
(a) the person is sent a questionnaire under subsection 23DN(2); and
(b) the person either:

Authorised Version C2016C00388 registered 02/05/2016

(i) fails to return the questionnaire in accordance with subsection 23DN(3); or

(ii) returns the questionnaire but fails to complete it in accordance with subsection 23DN(3).

Penalty: 30 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

58AF False or misleading information to avoid jury service

(1) A person commits an offence if:

(a) the person gives information to the Court, the Sheriff or another officer of the Court; and

(b) the information:

(i) is false or misleading; or

(ii) omits any matter or thing without which the information is misleading; and

(c) the person does so with the intent of avoiding service as a juror.

Penalty: 60 penalty units.

(2) Subsection (1) does not apply as a result of subparagraph (1)(b)(i) if the information is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

(3) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii) if the information did not omit any matter or thing without which the information is misleading in a material particular.

Authorised Version C2016C00388 registered 02/05/2016

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

58AG Bribery of jurors or potential jurors

Giving a bribe

(1) A person commits an offence if:
  (a) the person dishonestly:
    (i) provides a benefit to another person; or
    (ii) causes a benefit to be provided to another person; or
    (iii) offers to provide, or promises to provide, a benefit to another person; or
    (iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person; and
  (b) the person does so with the intent of influencing:
    (i) a juror (who may or may not be the other person) in the exercise of the juror's duties as a juror; or
    (ii) a potential juror (who may or may not be the other person) in the exercise of the potential juror's duties as a potential juror.

Penalty: Imprisonment for 10 years.

Receiving a bribe

(2) A person commits an offence if:
  (a) the person is a juror or potential juror; and
  (b) the person dishonestly:
    (i) asks for a benefit for himself, herself or another person; or
    (ii) receives or obtains a benefit for himself, herself or another person; or
    (iii) agrees to receive or obtain a benefit for himself, herself or another person; and
  (c) the person does so with the intent:

Authorised Version C2016C00388 registered 02/05/2016

(i) that the exercise of the person's duties as a juror or potential juror will be influenced; or

(ii) of inducing, fostering or sustaining a belief that the exercise of the person's duties as a juror or potential juror will be influenced.

Penalty: Imprisonment for 10 years.

Determination of dishonesty to be a matter for the trier of fact

(3) In a prosecution for an offence against this section, the determination of dishonesty is a matter for the trier of fact.

Expressions have Criminal Code meaning

(4) An expression used in this section that is also used in Chapter 7 of the *Criminal Code* has the same meaning in this section as it has in that Chapter.

58AH Causing or threatening harm to jurors, potential jurors or former jurors

Causing harm

(1) A person (the ***first person***) commits an offence if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes harm to another person (the ***second person***); and

(c) the second person, or a third person, (the ***targeted person***) is a juror, potential juror or former juror; and

(d) the first person intends that his or her conduct cause harm to the second person; and

(e) the harm is caused without the consent of the second person; and

(f) the first person engages in his or her conduct because of:

(i) the targeted person's status as a juror, potential juror or former juror; or

Authorised Version C2016C00388 registered 02/05/2016

(ii) any conduct engaged in by the targeted person in the targeted person's capacity as a juror or potential juror.

Penalty: Imprisonment for 10 years.

Threatening to cause harm

(2) A person (the ***first person***) commits an offence if:

(a) the first person makes to another person (the ***second person***) a threat to cause harm to the second person or to a third person; and

(b) the second person, or the third person, (the ***targeted person***) is a juror, potential juror or former juror; and

(c) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(d) the first person makes the threat because of:

(i) the targeted person's status as a juror, potential juror or former juror; or

(ii) any conduct engaged in by the targeted person in the targeted person's capacity as a juror or potential juror.

Penalty: Imprisonment for 7 years.

When conduct causes harm

(3) For the purposes of this section, a person's conduct is taken to cause harm if it substantially contributes to harm.

Unnecessary to prove that a threatened person actually feared harm

(4) In a prosecution for an offence against this section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

Authorised Version C2016C00388 registered 02/05/2016

Expressions have Criminal Code meaning

(5) An expression used in this section that is also used in Part 7.8 of the *Criminal Code* has the same meaning in this section as it has in that Part.

58AI Obstructing jurors or potential jurors

A person commits an offence if:

(a) the person knows that another person is a juror or potential juror; and

(b) the first-mentioned person obstructs, hinders, intimidates or resists the other person in the performance of the other person's duties, or functions, as a juror or potential juror.

Penalty: Imprisonment for 12 months.

58AJ Publishing or broadcasting information identifying jurors, potential jurors or former jurors

(1) A person commits an offence if:

(a) the person publishes or broadcasts information to the public; and

(b) either:

(i) the information identifies another person as a juror, potential juror or former juror; or

(ii) a member of the public could reasonably be expected to identify the other person as a juror, potential juror or former juror either on the basis of the information or on the basis of the information in conjunction with other publicly-available information.

Penalty: 50 penalty units.

(2) A person commits an offence if:

(a) the person publishes or broadcasts information to a section of the public; and

Authorised Version C2016C00388 registered 02/05/2016

(b) either:

(i) the information identifies another person as a juror, potential juror or former juror; or

(ii) a member of that section of the public could reasonably be expected to identify the other person as a juror, potential juror or former juror either on the basis of the information or on the basis of the information in conjunction with other information available to that section of the public.

Penalty: 50 penalty units.

(3) Subsections (1) and (2) do not apply to a publication or broadcast that occurs in circumstances specified in regulations made for the purposes of this section.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

58AK Soliciting information from jurors

(1) A person commits an offence if:

(a) the person (the ***first person***) solicits another person (the ***second person***) for information; and

(b) the second person is a juror or former juror; and

(c) one of the following subparagraphs applies:

(i) the information identifies a person as a juror or former juror;

(ii) the first person could reasonably be expected to identify a person as a juror or former juror either on the basis of the information or on the basis of the information in conjunction with other information available to the first person;

(iii) the information relates to the deliberations of the jury.

Penalty: 60 penalty units.

Authorised Version C2016C00388 registered 02/05/2016

(2) A person commits an offence if:

(a) the person (the ***first person***) solicits another person (the ***second person***) for information; and

(b) the second person is a juror or former juror; and

(c) one of the following subparagraphs applies:

(i) the information identifies a person as a juror or former juror;

(ii) the first person could reasonably be expected to identify a person as a juror or former juror either on the basis of the information or on the basis of the information in conjunction with other information available to the first person;

(iii) the information relates to the deliberations of the jury; and

(d) the first person:

(i) provides a benefit to another person; or

(ii) causes a benefit to be provided to another person; or

(iii) offers to provide, or promises to provide, a benefit to another person; or

(iv) causes an offer of the provision of a benefit, or a promise of the provision of a benefit, to be made to another person;

in relation to the soliciting of the information.

Penalty: Imprisonment for 6 months.

(3) Subsections (1) and (2) do not apply if:

(a) a Judge or officer of the Court solicits the information because of a suspicion that a juror or former juror is or was biased in relation to the performance of that juror's, or former juror's, duties as a juror; or

(b) an investigating official solicits the information because of a suspicion that a juror or former juror committed:

(i) fraud; or

(ii) another offence against a law of the Commonwealth or a State or Territory;

Authorised Version C2016C00388 registered 02/05/2016

in relation to the performance of that juror's, or former juror's, duties as a juror; or

(c) the information was solicited in accordance with the performance of a function under this Act; or

(d) the information was solicited in accordance with an authority granted by the Attorney-General for the conduct of a research project into matters relating to juries or jurors; or

(e) a health professional solicited the information from the former juror when treating the former juror in relation to issues arising out of the former juror's service on the jury.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

(4) In this section:

benefit has the same meaning as in the *Criminal Code*.

investigating official means any of the following:

(a) the Attorney-General;

(b) the Director of Public Prosecutions;

(c) a member of the Australian Federal Police or of the police force or police service of a State or Territory;

(d) a Judge or officer of the Court.

58AL Disclosing information about a jury

(1) A person commits an offence if:

(a) the person is a juror or former juror; and

(b) the person discloses information to another person (the ***second person***); and

(c) one of the following subparagraphs applies:

(i) the information identifies a person as a juror or former juror;

(ii) the second person could reasonably be expected to identify a person as a juror or former juror either on the basis of the information or on the basis of the

Authorised Version C2016C00388 registered 02/05/2016

information in conjunction with other information available to the second person;

(iii) the information relates to the deliberations of the jury.

Penalty: 60 penalty units.

(2) A person commits an offence if:

(a) the person is a juror or former juror; and

(b) the person discloses information to another person (the ***second person***); and

(c) one of the following subparagraphs applies:

(i) the information identifies a person as a juror or former juror;

(ii) the second person could reasonably be expected to identify a person as a juror or former juror either on the basis of the information or on the basis of the information in conjunction with other information available to the second person;

(iii) the information relates to the deliberations of the jury; and

(d) the first-mentioned person:

(i) asks for a benefit for himself, herself or another person; or

(ii) receives or obtains a benefit for himself, herself or another person; or

(iii) agrees to receive or obtain a benefit for himself, herself or another person;

in relation to the disclosure.

Penalty: Imprisonment for 6 months.

(3) Subsections (1) and (2) do not apply if:

(a) the disclosure was to a Judge or officer of the Court because of a suspicion that a juror or former juror is or was biased in relation to the performance of that other juror's, or former juror's, duties as a juror; or

Authorised Version C2016C00388 registered 02/05/2016

(b) the disclosure was to an investigating official because of a suspicion that a juror or former juror committed:
  (i) fraud; or
  (ii) another offence against a law of the Commonwealth or a State or Territory;
in relation to the performance of that other juror's, or former juror's, duties as a juror; or

(c) the disclosure was made in accordance with the performance of a function under this Act; or

(d) the disclosure was made in accordance with an authority granted by the Attorney-General for the conduct of a research project into matters relating to juries or jurors; or

(e) the disclosure was made by a former juror to a health professional who is treating the former juror in relation to issues arising out of the former juror's service on the jury.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3)—see subsection 13.3(3) of the *Criminal Code*.

Interpretation

(4) An expression used in subsection (2) that is also used in Chapter 7 of the *Criminal Code* has the same meaning in that subsection as it has in that Chapter.

(5) In this section:

investigating official means any of the following:
(a) the Attorney-General;
(b) the Director of Public Prosecutions;
(c) a member of the Australian Federal Police or of the police force or police service of a State or Territory;
(d) a Judge or officer of the Court.

58AM Making improper inquiries as a juror or potential juror

A person commits an offence if:
(a) the person is a juror or potential juror; and

Authorised Version C2016C00388 registered 02/05/2016

(b) the person makes an inquiry for the purposes of obtaining information relating to:

(i) in the case of indictable primary proceedings—the accused, or one of the accused, being tried; or

(ii) in every case—any matter relevant to the trial; and

(c) the inquiry is not directed to the presiding Judge, the Sheriff or a fellow juror or fellow potential juror.

Penalty: 60 penalty units.

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Infringement notices

58BA When an infringement notice can be given

(1) If the Sheriff has reasonable grounds to believe that a person has committed an offence against section 58AA or 58AE, the Sheriff may give the person an infringement notice relating to the alleged offence.

(2) The infringement notice must be given within 12 months after the day on which the offence is alleged to have been committed.

58BB Matters to be included in an infringement notice

An infringement notice must:

(a) be identified by a unique number; and

(b) set out the name of the person to whom the notice is given (the ***recipient***); and

(c) set out the name of the person who gave the notice; and

(d) set out brief details of the alleged offence, including relevant dates and the maximum penalty a court could impose for the alleged offence; and

(e) state that criminal proceedings will not be brought in relation to the matter if the penalty specified in the notice is paid to the Sheriff, on behalf of the Commonwealth, within:

(i) 28 days after the notice is given; or

(ii) if the Sheriff allows a longer period—that longer period; and

(f) state that payment of the penalty is not an admission of guilt or liability; and

(g) give an explanation of how payment of the penalty is to be made; and

(h) invite the recipient to, within 28 days after the notice is given, notify the Sheriff in the manner set out in the notice of any reason why the Sheriff should withdraw the infringement notice; and

Authorised Version C2016C00388 registered 02/05/2016

(i) state that the period referred to in paragraph (e) will be extended if the Sheriff is given a notification described in paragraph (h); and
(j) set out such other matters (if any) as are specified in the regulations.

58BC Amount of penalty

The penalty to be specified in an infringement notice relating to an alleged offence must be a pecuniary penalty equal to one-fifth of the maximum penalty that a court could impose for the offence.

58BD Withdrawal of an infringement notice

Sheriff may withdraw an infringement notice

(1) This section applies if an infringement notice is given to a person.

(2) The Sheriff may, by written notice (the ***withdrawal notice***) given to the person, withdraw the infringement notice.

Withdrawal can only occur after first 28 days if Sheriff notified of reasons

(3) A withdrawal notice cannot be given more than 28 days after the infringement notice was given unless the person has notified the Sheriff in accordance with the infringement notice of a reason why the Sheriff should withdraw the infringement notice.

If person notifies Sheriff of reasons to withdraw

(4) If the person notifies the Sheriff in accordance with the infringement notice of a reason why the Sheriff should withdraw the infringement notice, the Sheriff must:
(a) decide whether to withdraw the infringement notice; and
(b) if the Sheriff decides to refuse to withdraw the infringement notice—give the person a written notice (the ***refusal notice***) of that decision.

Authorised Version C2016C00388 registered 02/05/2016

(5) The refusal notice must contain a statement to the effect that criminal proceedings will not be brought in relation to the matter if the penalty specified in the infringement notice is paid to the Sheriff, on behalf of the Commonwealth, within 28 days after the refusal notice is given.

Refund of penalty if infringement notice withdrawn

(6) If:

(a) the penalty specified in the infringement notice is paid; and

(b) the infringement notice is withdrawn after the penalty is paid;

the Commonwealth is liable to refund the penalty.

58BE What happens if the penalty is paid

(1) This section applies if:

(a) an infringement notice relating to an alleged offence against section 58AA or 58AE is given to a person; and

(b) the penalty is paid in accordance with:

(i) the infringement notice; or

(ii) if a refusal notice is given to the person under subsection 58BD(4)—the refusal notice; and

(c) the infringement notice is not withdrawn.

(2) Any liability of the person for the alleged offence is discharged.

(3) Criminal proceedings may not be brought against the person for the alleged offence.

(4) The person is not regarded as having been convicted of the offence specified in the infringement notice.

58BF Effect of this Division on criminal proceedings

(1) This Division does not:

(a) require an infringement notice to be given in relation to an alleged offence against section 58AA or 58AE; or

Authorised Version C2016C00388 registered 02/05/2016

(b) affect the liability of a person to be prosecuted for an offence against section 58AA or 58AE if:

(i) the person does not comply with an infringement notice, or a refusal notice given to the person under subsection 58BD(4), relating to the offence; or

(ii) an infringement notice relating to the offence is not given to the person; or

(iii) an infringement notice relating to the offence is given to the person and subsequently withdrawn; or

(c) limit a court's discretion to determine the amount of a penalty to be imposed on a person convicted of an offence against section 58AA or 58AE.

(2) Evidence of an admission made by a person in notifying the Sheriff in accordance with an infringement notice of a reason why the Sheriff should withdraw the infringement notice is inadmissible in proceedings against the person for the alleged offence concerned.

(3) Subsection (2) does not apply if the person gives evidence in the proceedings that is inconsistent with the admission.

58BG Regulations

The regulations may make further provision in relation to:

(a) infringement notices; and

(b) refusal notices given under subsection 58BD(4).

Authorised Version C2016C00388 registered 02/05/2016

Part VIB—Bail

Division 1—Introduction

58CA Simplified outline

The following is a simplified outline of this Part:

- During indictable primary proceedings or criminal appeal proceedings the Court may grant (and continue) bail for the accused.
- If granted bail, the accused must sign a bail undertaking.
- A decision about bail may be reconsidered if there is a change in circumstances.
- The Court must also reconsider bail if the accused fails to comply with the accused's bail undertaking.
- A failure by the accused to appear before the Court in accordance with the accused's bail undertaking may be an offence, and may lead to the forfeiture of security provided as a condition of bail.

Note 1: The procedures relating to bail and custody during committal proceedings, and during summary prosecutions in the Court, are those applying under subsection 68(1) of the *Judiciary Act 1903* (see also paragraph 68B(1)(b) of that Act).

Note 2: During indictable primary proceedings, the Court may decide to remand the accused in custody (see section 23HA).

Authorised Version C2016C00388 registered 02/05/2016

Division 2—Granting bail

58DA Applying for bail

(1) During indictable primary proceedings or criminal appeal proceedings, the accused can apply to the Court for bail for one or more offences.

(2) However, if the Court refuses to grant bail to the accused for an offence, the accused cannot apply again for bail for the offence unless there has been a material change in circumstances since the refusal.

58DB Granting bail

(1) The Court may, by order, grant bail to the accused for one or more of the offences.

(2) In deciding whether to grant bail, the Court must consider the following:
  (a) whether the accused will appear in court if bail is granted;
  (b) the interests of the accused;
  (c) the protection of any other person;
  (d) the protection and welfare of the community, including whether there is a risk that the accused will commit offences if bail were granted;
  (e) whether there is a risk that the accused will approach witnesses or attempt to destroy evidence.

(2A) An accused applying for bail during indictable primary proceedings is entitled to be granted bail during the proceedings in relation to an offence against either of the following sections of the *Competition and Consumer Act 2010*:
  (a) section 44ZZRF (making a contract etc. containing a cartel provision);
  (b) section 44ZZRG (giving effect to a cartel provision);

Authorised Version C2016C00388 registered 02/05/2016

unless the Court decides otherwise after considering the matters mentioned in subsection (2).

(3) In deciding whether to grant bail during criminal appeal proceedings, the Court must also be satisfied that there are exceptional circumstances that justify granting bail.

(4) This section has effect subject to any other Act.

58DC Bail may be granted subject to conditions

(1) A bail order may be made unconditionally or subject to one or more specified conditions.

(2) Without limiting subsection (1), the conditions can include one or more of the following:

(a) the accused reside at a specified place;

(b) the accused report to a specified person at a specified place at a specified time or times;

(c) the accused surrender any passport or document issued for the purposes of travel held by the accused and agree not to approach a point of international departure;

(d) the accused provide security in the form of money, or other property, for forfeiture if the accused fails to appear before the Court in accordance with the accused's bail undertaking;

(e) one or more other specified persons provide security in the form of money, or other property, for forfeiture if the accused fails to appear before the Court in accordance with the accused's bail undertaking.

(3) Money or other property deposited with the Court, or otherwise provided, as security in accordance with a condition of bail must be dealt with by the Court in accordance with the Rules of Court.

58DD Bail to be stayed pending appeal

(1) If:

(a) the Court makes a bail order; and

Authorised Version C2016C00388 registered 02/05/2016

(b) the prosecutor requests the Court to stay the bail order pending appeal;

the bail order is stayed by force of this section for 48 hours.

(2) If a notice of appeal from the bail order is filed within that 48 hours, the stay of the bail order continues by force of this section until:

(a) the appeal is finally disposed of; or

(b) the prosecutor withdraws the appeal in accordance with the Rules of Court; or

(c) a Full Court orders, under this subsection, that the stay be set aside;

whichever happens first.

(3) If the prosecutor makes a request under paragraph (1)(b), the appeal from the making of the bail order must be dealt with as quickly as possible.

(4) If a bail order is stayed by force of this section, the Court must, by warrant of commitment, remand the accused in custody for the duration of the stay.

(5) A warrant of commitment under subsection (4) may be signed by any Judge, the Registrar or any Deputy Registrar, District Registrar or Deputy District Registrar of the Court.

58DE Bail undertakings etc.

(1) If the Court grants bail to the accused, then the accused can only be released on bail if:

(a) the accused has signed an undertaking (a ***bail undertaking***) containing the matters set out in subsection (2) and made in accordance with the Rules of Court; and

(b) each other person (if any), who as a condition of bail has agreed to provide security, has signed an undertaking (a ***third party security undertaking***) made in accordance with the Rules of Court; and

Authorised Version C2016C00388 registered 02/05/2016

(c) subsection 58DC(3) is complied with in relation to any security required as a condition of bail.

(2) A bail undertaking must set out:

(a) an undertaking by the accused to:

(i) appear in person before the Court in accordance with the bail order; and

(ii) promptly notify the Court if the accused changes his or her residential address; and

(b) an undertaking by the accused to comply with the specified conditions, if any, on which bail has been granted.

(3) A bail undertaking, and any third party security undertaking made in relation to the accused's bail, must be expressed to cover:

(a) the period for which bail was granted; and

(b) each period for which bail may be continued under subsection 58GA(1).

(4) The Registrar must cause the parties to be given a copy of:

(a) the accused's bail undertaking; and

(b) any third party security undertaking made in relation to the accused's bail.

58DF Effect of granting bail

(1) If an accused is released on bail under this Part for an offence, the accused is entitled to be at liberty in respect of the offence in accordance with the accused's bail undertaking.

Note: This does not prevent the accused from being held in custody for some other offence.

(2) Subsection (1) is subject to a stay under section 58DD.

58DG Seeking discharge from undertaking to give security

(1) A person who has made a third party security undertaking in relation to the accused's bail may apply to the Court to be discharged from the person's liability under that undertaking.

Authorised Version C2016C00388 registered 02/05/2016

(2) If:

(a) the person so applies; and

(b) at the time of applying, the accused has not failed to appear before the Court in accordance with the accused's bail undertaking;

the Court must direct that the person be discharged from this liability, unless satisfied it would be contrary to the interests of justice to do so.

Note: A direction will cause a reconsideration of the accused's bail (see Division 3).

58DH Dealings with property given as security for bail

A person commits an offence if:

(a) the person is:

(i) an accused who has signed a bail undertaking; or

(ii) a person who has signed a third party security undertaking made in relation to the accused's bail; and

(b) the person has, under that undertaking, undertaken to forfeit security if the accused does not appear before the Court in accordance with the accused's bail undertaking; and

(c) while the person's undertaking is in force, the person:

(i) disposes of, or otherwise deals with, any of that security that is not money; and

(ii) intends by this to prevent the forfeiture of the security, to destroy the security or to reduce its value.

Penalty: Imprisonment for 2 years.

Authorised Version C2016C00388 registered 02/05/2016

Division 3—Reconsidering bail orders

58EA Reconsidering bail—discharge of security or accused fails to comply with the accused's bail undertaking

(1) This section applies if, in relation to a bail order:
  (a) the Court gives a direction under subsection 58DG(2); or
  (b) the prosecutor applies for the bail order to be varied or revoked on the basis that the accused has failed to comply with the accused's bail undertaking.

(2) The Court must cause the accused to be brought before the Court in accordance with the Rules of Court.

Note: In a case where the accused failed to appear before the Court in accordance with the accused's bail undertaking, the Court may be asked to commence forfeiture proceedings (see section 58FB).

(3) The Court may, by order, vary or revoke the bail order.

(4) In deciding whether to vary or revoke the bail order, the Court must consider:
  (a) the matters set out in subsection 58DB(2); and
  (b) if the decision is to be made during criminal appeal proceedings—the principle that exceptional circumstances must exist for the accused to be released on bail.

58EB Reconsidering bail—change in circumstances

(1) The Court may, by order, vary or revoke the accused's bail order under this section if:
  (a) the Court is satisfied that there has been a sufficient change in circumstances since the making of the bail order; and
  (b) the Court considers:
    (i) the matters set out in subsection 58DB(2); and
    (ii) if the decision is to be made during criminal appeal proceedings—the principle that exceptional

Authorised Version C2016C00388 registered 02/05/2016

circumstances must exist for the accused to be released on bail.

(2) If the Court is satisfied an application for an order under this section is frivolous or vexatious, the Court may refuse the application without a hearing.

58EC Consequences if bail is varied or revoked

(1) If the Court varies the accused's bail under this Division, then the accused can only be released on bail if:

(a) the accused has signed a new bail undertaking under paragraph 58DE(1)(a); and

(b) each other person (if any), who has undertaken to provide security as a condition of bail, has signed a new third party security undertaking under paragraph 58DE(1)(b); and

(c) subsection 58DC(3) is complied with in relation to any security required as a condition of bail.

(2) If the Court revokes the accused's bail under this Division, the Court may cause the accused to be committed to prison in accordance with the Rules of Court.

Authorised Version C2016C00388 registered 02/05/2016

Division 4—Further consequences if accused fails to appear in accordance with bail undertaking

58FA Offence for failing to appear before the Court

(1) A person commits an offence if:
  (a) the person is the accused; and
  (b) the person gives the Court a bail undertaking; and
  (c) the person is released on bail under this Part; and
  (d) the person fails to appear before the Court in accordance with the bail undertaking.

Penalty: Imprisonment for 2 years.

Note: The accused's bail will also be reconsidered under Division 3.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2)—see subsection 13.3(3) of the *Criminal Code*.

58FB Notice of proposed forfeiture

(1) The prosecutor may apply to the Court for a direction under subsection (2) if the accused allegedly fails to appear before the Court in accordance with the accused's bail undertaking.

(2) The Court may direct the Registrar to give a notice to:
  (a) each person who provided security for the accused's bail; and
  (b) any other person who the Court considers may have an interest in security provided for the accused's bail.

A failure by the Registrar to give a notice to a person covered by the direction, if the Registrar has made reasonable efforts to do so, does not affect the validity of any forfeiture order.

Authorised Version C2016C00388 registered 02/05/2016

(3) The notice must:
  (a) invite the person to show cause, by filing an objection in accordance with paragraphs 58FC(3)(b) and (c), why the security should not be forfeited; and
  (b) contain the particulars set out in the Rules of Court.

(4) An application under subsection (1) cannot be made more than 6 months after the alleged failure to appear before the Court.

58FC Ordering forfeiture

(1) The Court must order the forfeiture of all specified security provided by a particular person for the accused's bail if the Court is satisfied that the accused failed to appear before the Court in accordance with the accused's bail undertaking.

Note 1: For the forfeiture of security provided by more than one person, separate forfeiture orders will be required.

Note 2: A forfeiture order may be appealed (see subsection 30AA(3)).

(2) However, the Court may decide to not make a forfeiture order, or to reduce the amount of security to be forfeited, if the Court is satisfied that:
  (a) the accused had a reasonable excuse for failing to appear; or
  (b) it is in the interests of justice to do so.

(3) In deciding whether to make a forfeiture order, the Court must consider any objection:
  (a) filed by a person who the Court is satisfied either provided security for the accused's bail or has an interest in such security; and
  (b) filed before the end of the 28th day after:
    (i) if the person was given a notice under subsection 58FB(2)—the day of being given the notice; or
    (ii) otherwise—the first day on which a notice was given to a person under subsection 58FB(2); and

Authorised Version C2016C00388 registered 02/05/2016

(c) containing the particulars set out in the Rules of Court.

The Court may also invite the person to make submissions.

58FD When forfeiture orders take effect

(1) A forfeiture order never takes effect if it is set aside on appeal.

(2) If the forfeiture order is not set aside on appeal, it takes effect:

(a) if a notice of appeal was not filed in relation to the order—at the end of the time for filing such a notice under section 30AF; or

(b) otherwise—when the appeal is finally disposed of.

Note: If a forfeiture order is varied on appeal, it will take effect as varied.

(3) If a forfeiture order takes effect, the Registrar must give written notice that it has taken effect to:

(a) the person who provided the security forfeited by the order; and

(b) each other person (if any) who objected to the making of the order in relation to that security.

58FE Effect of forfeiture orders

Security is money held by the Court or property other than registrable property

(1) If security specified in a forfeiture order is:

(a) money deposited with or otherwise provided to the Court; or

(b) property other than:

(i) money; or

(ii) registrable property;

the security vests absolutely in the Commonwealth at the time the order takes effect.

Authorised Version C2016C00388 registered 02/05/2016

Section 58FE

Security is money not held by the Court

(2) If security specified in a forfeiture order is an amount of money that has not been deposited with or otherwise provided to the Court, then:

(a) the amount is taken to be a civil debt payable by the provider of the security to the Commonwealth at the time the order takes effect; and

(b) the Commonwealth may enforce the forfeiture order as if it were an order made in civil proceedings against the provider to recover a debt due by the provider; and

(c) the debt arising from the order is taken to be a judgment debt; and

(d) if the undertaking under which the amount was provided as security also specified property to secure payment of the amount—the Commonwealth may enforce the undertaking in respect of that property.

Security is registrable property

(3) If security specified in a forfeiture order is registrable property, then:

(a) that property vests in equity in the Commonwealth but does not vest in the Commonwealth at law until the applicable registration requirements have been complied with; and

(b) the prosecutor may, on behalf of the Commonwealth, do anything necessary or convenient to give notice of, or otherwise protect, the Commonwealth's equitable interest in that property; and

(c) the Commonwealth is entitled to be registered as the owner of that property; and

(d) the Court may, by order, authorise a person to:

(i) do; or

(ii) authorise the doing of;

anything necessary or convenient to obtain the registration of the Commonwealth as the owner.

Authorised Version C2016C00388 registered 02/05/2016

(4) The powers of a person who is the subject of an order under paragraph (3)(d) include executing any instrument required to be executed by a person transferring an interest in property of that kind.

*Meaning of **registrable property***

(5) In this section:

registrable property means property, title to which is passed by registration on a register kept pursuant to a provision of any law of the Commonwealth or of a State or Territory.

Authorised Version C2016C00388 registered 02/05/2016

Division 5—When bail ends

58GA Continuing bail orders

(1) The Court may direct that a bail order continue to have effect.

(2) Unless the Court orders otherwise, if:

(a) the accused appears before the Court in accordance with the accused's bail undertaking; and

(b) the accused's bail order would no longer have effect after that appearance (otherwise than because of section 58GB); and

(c) the Court does not make a direction under subsection (1) during that appearance;

the Court is taken to have directed under subsection (1) that the bail order continue to have effect until the accused's next scheduled appearance before the Court.

(3) If the Court gives a direction under subsection (1), each of the following continue to have effect:

(a) the accused's bail undertaking;

(b) each third party security undertaking made in relation to the accused's bail;

subject to any contrary intention in the undertaking and to any variation ordered by the Court.

58GB Bail discharged if the Court discharges the accused

A bail order ceases to have effect if the Court discharges the accused in relation to all the offences for which bail was granted.

58GC Continuing security undertakings when bail ends

(1) This section applies if:

(a) security was provided for the accused's bail; and

Authorised Version C2016C00388 registered 02/05/2016

(b) the accused's bail order is revoked under section 58EA because of a failure by the accused to appear before the Court in accordance with the accused's bail undertaking.

(2) Despite the revocation, each of the following continue to have effect to the extent to which they relate to the security provided for the accused's bail:

(a) the accused's bail undertaking;

(b) each third party security undertaking made in relation to the accused's bail.

Note: Generally, the bail undertaking and any third party security undertaking will automatically end at the same time as the bail order.

(3) This continuation of an undertaking to provide security ceases if:

(a) a forfeiture order cannot take effect in relation to the security and the failure; or

(b) the Court orders the continuation to cease.

Note 1: When a forfeiture order takes effect is set out in section 58FE.

Note 2: A forfeiture order cannot be made unless an application is made within 6 months of the failure (see subsection 58FB(4)).

58GD Returning security when bail ends

If:

(a) a person provides security for the accused's bail under a bail undertaking or third party security undertaking; and

(b) the accused's bail order ceases to have effect; and

(c) if section 58GC applies—the continuation of the undertaking to provide the security ceases under subsection 58GC(3); and

(d) the Court holds the security solely because of the undertaking;

the Court must return the security to the person.

Note: The money or property will not be returned if it was forfeited under Division 4 or is being held as security in relation to another bail order.

Authorised Version C2016C00388 registered 02/05/2016

Division 6—Other matters

58HA Admissibility of certain matters

(1) Each of the following documents is to be received in all courts and proceedings as prima facie evidence of their contents:

(a) a bail order;

(b) a bail undertaking;

(c) a third party security undertaking;

(d) a notice referred to in subparagraph 58DE(2)(a)(ii) (about change of address) given by the accused to the Court.

(2) A copy, certified by an officer of the Court, of a document referred to in subsection (1) is admissible in evidence in all courts and proceedings without further proof or production of the original.

Note: This means that a certified copy is to be received in all courts and proceedings as prima facie evidence of the original's contents.

(3) An officer of the Court may issue a written certificate stating that:

(a) a condition specified in a bail order:

(i) has not been varied; or

(ii) has been varied in a specified way; or

(b) a notice was given under subsection 58FB(2) to a specified person in a specified way on a specified day; or

(c) the accused did not appear in person before the Court:

(i) at a specified place; or

(ii) on a specified day or during a specified period; or

(d) the accused did not notify the Court of a change in the accused's residential address; or

(e) the accused notified the Court of a change in the accused's residential address:

(i) to a specified address; and

(ii) on a specified day.

Authorised Version C2016C00388 registered 02/05/2016

(4) The certificate is to be received in all courts and proceedings as prima facie evidence of the statements in the certificate.

(5) A document purporting to be a certificate under subsection (3) is taken to be such a certificate and to have been duly given, unless the contrary is established.

58HB Indemnifying a person providing security

(1) A person commits an offence if:

(a) the person signs a bail undertaking, or a third party security undertaking, to provide security as a condition of bail; and

(b) the person agrees to be indemnified by another person against any forfeiture under this Part of that security.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if the person agrees to indemnify another person against any forfeiture under this Part of security provided by that other person as a condition of bail.

Penalty: Imprisonment for 2 years.

Authorised Version C2016C00388 registered 02/05/2016

Part VII—Rules of Court and regulations

59 Rules of Court

(1) The Judges of the Court or a majority of them may make Rules of Court, not inconsistent with this Act, making provision for or in relation to the practice and procedure to be followed in the Court (including the practice and procedure to be followed in Registries of the Court) and for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Court.

(2) In particular, the Rules of Court may make provision for or in relation to:

(a) pleading; and

(b) appearance under protest; and

(c) interrogatories and discovery, production and inspection of documents; and

(d) the attendance of witnesses; and

(e) the administration of oaths and affirmations; and

(f) the custody of convicted persons; and

(g) the service and execution of the process of the Court, including the manner in which and the extent to which the process of the Court, or notice of any such process, may be served out of the jurisdiction of the Court; and

(h) the issue by the Court of letters of request for the service in another country of any process of the Court; and

(i) the service by officers of the Court, in the Commonwealth or in a Territory, of the process of a court of another country or of a part of another country, in accordance with a request of that court or of an authority of that country or of that part of that country, or in accordance with an arrangement in force between Australia and the government of that other country or of that part of that other country; and

Authorised Version C2016C00388 registered 02/05/2016

(j) the enforcement and execution of judgments of the Court; and

(k) the stay of proceedings in, or under judgments of, the Court or another court; and

(l) the prevention or termination of vexatious proceedings; and

(m) the death of parties; and

(n) the furnishing of security; and

(o) the costs of proceedings in the Court; and

(p) the means by which particular facts may be proved and the mode in which evidence of particular facts may be given; and

(q) the forms to be used for the purposes of proceedings in the Court; and

(r) the time and manner of instituting appeals to the Court; and

(s) the duties of officers of the Court; and

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

(ta) the administration of oaths and affirmations in respect of testimony to be given by video link, audio link or other appropriate means; and

(tb) the making or receipt of submissions by video link, audio link or other appropriate means; and

(u) the reception from New Zealand of copies of instruments, documents and things reproduced by facsimile telegraphy; and

(v) the reception from New Zealand of evidence or submissions by video link or audio link; and

(w) issuing subpoenas for service in New Zealand and the service of such subpoenas; and

(x) the form to accompany a subpoena for service in New Zealand; and

(y) the Court's sittings in New Zealand under Part 8 of the *Trans-Tasman Proceedings Act 2010*; and

Authorised Version C2016C00388 registered 02/05/2016

(za) the enforcement of orders under subsection 85(5) of the *Trans-Tasman Proceedings Act 2010*; and

(zb) the registration and enforcement, and the setting aside of the registration, of judgments under Part 7 of the *Trans-Tasman Proceedings Act 2010*; and

(zc) the transmission of documents to the High Court of New Zealand; and

(zd) taking evidence under section 89 of the *Trans-Tasman Proceedings Act 2010*; and

(ze) the exercise in Chambers of the Court's jurisdiction under Part 8 of the *Trans-Tasman Proceedings Act 2010*; and

(zf) the referral of any proceedings in the Court, or any part of such proceedings or any matters arising out of such proceedings, to a mediator or an arbitrator for mediation or arbitration, as the case may be; and

(zg) the procedures to be followed by a mediator or an arbitrator in mediating or arbitrating anything referred for mediation or arbitration under this Act; and

(zh) the attendance by persons at conferences conducted by mediators or arbitrators for the purposes of mediating or arbitrating anything so referred; and

(zi) the procedure when any such mediation or arbitration ends, both where it has resulted in an agreement or award and where it has not; and

(zj) the practice and procedure of the Court in relation to any matter arising under the *Native Title Act 1993*; and

(zk) the notification of determinations of native title to the Registrar of the National Native Title Tribunal; and

(zl) the duties of assessors appointed under Part VA of this Act; and

(zm) indictments filed in the Court, including:

(i) the amendment of such indictments and the substitution of new indictments for such indictments; and

(ii) the quashing of such indictments by the Court; and

(iii) the joining and separation of multiple accused in a single count in such an indictment; and

Authorised Version C2016C00388 registered 02/05/2016

(iv) the joining and separation of counts in such an indictment; and

(v) the presenting of indictments; and

(zn) the discontinuance or stay of criminal proceedings; and

(zo) the management of criminal proceedings; and

(zp) pre-trial hearings, pre-trial disclosure and the determination of issues in criminal proceedings; and

(zq) disclosure in criminal proceedings by the prosecution and the accused; and

(zr) pleas in criminal proceedings; and

(zs) the presentation of cases in criminal proceedings; and

(zt) the service of documents in criminal proceedings; and

(zu) the selection and management of jurors; and

(zv) the appearance of the accused by means of video link, audio links or other appropriate means; and

(zw) the adjournment of criminal proceedings; and

(zx) the practice and procedure of the Court in relation to any or all of the following proceedings:

(i) proceedings under the *Proceeds of Crime Act 2002*;

(ii) proceedings for the forfeiture of a thing under a law of the Commonwealth; and

(zy) the issue of warrants; and

(zz) bail, including the forfeiture of security provided for an accused's bail.

(2A) In particular, the Rules of Court may make further provision in relation to the taking or receipt of evidence, where:

(a) the evidence is given by video link, audio link or other appropriate means; and

(b) the Court or a Judge is authorised to receive the evidence under another provision of this Act or another law of the Commonwealth.

(2B) The Rules of Court may make provision for:

(a) the amendment of a document in a proceeding; or

Authorised Version C2016C00388 registered 02/05/2016

(b) leave to amend a document in a proceeding;

even if the effect of the amendment would be to allow a person to seek a remedy in respect of a legal or equitable claim that would have been barred because of the expiry of a period of limitation if the remedy had originally been sought at the time of the amendment.

(2C) Without limiting subsections (2), (2A) and (2B), the Rules of Court may make provision for, or with respect to, the following matters in relation to referrals of proceedings or questions to a referee under section 54A:

(a) the cases in which a proceeding, or a question arising in a proceeding, may be referred by the Court to a referee for inquiry and report to the Court;

(b) the appointment of a Judge, the Registrar or other officer of the Court or other person as a referee;

(c) the procedures to be followed by a referee in inquiring into and reporting on a proceeding, or a question arising in a proceeding, that has been referred to the referee;

(d) the participation (including attendance) of persons in an inquiry by a referee;

(e) the procedures to be followed by a referee after an inquiry by the referee has ended (whether or not a report has been provided to the Court);

(f) the manner in which a report by a referee may be called in question;

(g) the provision of the services of officers of the Court and the provision of court rooms and other facilities for the purpose of an inquiry by a referee;

(h) the fees payable to a referee;

(i) time limits to be observed by the parties to the proceeding to which an inquiry by a referee relates, in relation to any matter connected with the inquiry;

(j) any other matters associated with an inquiry or report by a referee.

Authorised Version C2016C00388 registered 02/05/2016

(2D) Without limiting subsection (2C), the Rules of Court may empower:

(a) the Court or a referee to require that evidence be given on oath or affirmation in an inquiry by a referee; or

(b) a referee to administer an oath or affirmation.

(3) Rules of Court under this Act have effect subject to any provision made by another Act, or by rules or regulations under another Act, with respect to the practice and procedure in particular matters.

(4) The *Legislation Act 2003* (other than sections 8, 9, 10 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 Judges of the Court; and

(c) subject to such further modifications or adaptations as are provided for in regulations made under section 59A of this Act.

(5) Despite the fact that section 16 of the *Legislation Act 2003* does not apply in relation to rules of court made by the Court under this Act or another Act, the Office of Parliamentary Counsel (established by subsection 2(1) of the *Parliamentary Counsel Act 1970*) may provide assistance in the drafting of any of those Rules if the Chief Justice so desires.

59A Regulations modifying or adapting the *Legislation Act 2003*

The Governor-General may make regulations for the purpose of subsection 59(4) modifying or adapting the provisions of the *Legislation Act 2003* (other than the provisions of Part 2 of Chapter 3 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) in their application to the Court.

Authorised Version C2016C00388 registered 02/05/2016

60 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;

and, in particular, prescribing the fees to be paid in respect of proceedings in the Court or the service or execution of the process of the Court by officers of the Court.

(2) This section does not prevent the making of rules or regulations under another Act with respect to a matter referred to in this section, or affect the operation of any such rules or regulations so far as they are not inconsistent with regulations under this section.

Authorised Version C2016C00388 registered 02/05/2016

The Schedule

Section 11

I,....., do swear that I will bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the Office of Chief Justice [or Judge] of the Federal Court of Australia and that I will do right to all manner of people according to law without fear or favour, affection or illwill. So help me God!

or

I,....., do solemnly and sincerely promise and declare that [as above, *omitting the words "So help me God*!"].

Authorised Version C2016C00388 registered 02/05/2016

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Authorised Version C2016C00388 registered 02/05/2016

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

Authorised Version C2016C00388 registered 02/05/2016

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2016C00388 registered 02/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Federal Court of Australia Act 1976	156, 1976	9 Dec 1976	9 Dec 1976	
Jurisdiction of Courts (Miscellaneous Amendments) Act 1979	19, 1979	28 Mar 1979	Parts II–XVII (s 3–123): 15 May 1979 (gaz 1979, No. S86) Remainder: 28 Mar 1979	s 124
Federal Court of Australia Amendment Act 1979	87, 1979	31 Aug 1979	1 Oct 1979 (s 2 and gaz 1979, No. S187, p. 17)	—
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 XXIII (s 154, 155): 4 June 1982 *(b)*	—
Statute Law (Miscellaneous Provisions) Act (No. 2) 1983	91, 1983	22 Nov 1983	s 3: 20 Dec 1983 *(c)*	s 6(1)
Federal Court of Australia Amendment Act 1984	11, 1984	10 Apr 1984	1 June 1984 (s 2 and gaz 1984, No. S153)	s 3(2)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1984	72, 1984	25 June 1984	s 3: 23 July 1984 *(d)*	s 5(1) and (6)

Authorised Version C2016C00388 registered 02/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law (Miscellaneous Provisions) Act (No. 2) 1984	165, 1984	25 Oct 1984	s 3: 22 Nov 1984 *(e)*	s 6(1)
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	s 3: 1 Mar 1986 (gaz 1986, No. S67) *(f)*	s 8
Statute Law (Miscellaneous Provisions) Act (No. 2) 1985	193, 1985	16 Dec 1985	s 3: Royal Assent *(g)*	s 16
Statute Law (Miscellaneous Provisions) Act (No. 1) 1986	76, 1986	24 June 1986	s 3: Royal Assent *(h)*	s 9
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 3: Royal Assent *(i)*	s 5(1)
Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988	8, 1988	5 Apr 1988	s 1–11, 12(b), (c), (e), (f), 13–21, 27, 29 and 30: Royal Assent s 12(a) and (d): 1 Jan 1990 Remainder: 1 July 1988 (gaz 1988, No. S191)	—
as amended by				
Law and Justice Legislation Amendment Act 1988	120, 1988	14 Dec 1988	Part XI (s 34, 35): 5 Apr 1988 *(j)*	—

Authorised Version C2016C00388 registered 02/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988	99, 1988	2 Dec 1988	2 Dec 1988	—
Courts and Tribunals Administration Amendment Act 1989	157, 1989	5 Dec 1989	Part 1 (s 1, 2) and Part 6 (s 17, 18): Royal Assent Remainder: 1 Jan 1990 (gaz 989, No. S398)	s 24
Law and Justice Legislation Amendment Act 1989	11, 1990	17 Jan 1990	Part 12 (s 35–37): 14 Feb 1990 *(k)*	—
Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990	70, 1990	16 June 1990	1 July 1990 (gaz 1990, No. S172)	—
Law and Justice Legislation Amendment Act 1990	115, 1990	21 Dec 1990	s 49: Royal Assent *(l)*	—
Foreign Judgments Act 1991	112, 1991	27 June 1991	s 21: 27 Oct 1991 Remainder: Royal Assent	—
Courts (Mediation and Arbitration) Act 1991	113, 1991	27 June 1991	s 3–13: 27 Dec 1991 Remainder: Royal Assent	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	s 4(1), 10(b) and 15–20: 1 Dec 1988 s 28(b)–(e), 30 and 31: 10 Dec 1991 (gaz 1991, No. S332) Remainder: Royal Assent	s 31(2)

Authorised Version C2016C00388 registered 02/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	Sch: 10 Oct 1991 *(m)*	—
Federal Court of Australia Amendment Act 1991	181, 1991	4 Dec 1991	4 Mar 1992	—
A.C.T. Supreme Court (Transfer) Act 1992	49, 1992	17 June 1992	1 July 1992	—
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992	94, 1992	30 June 1992	s 3: 1 July 1990 Remainder: Royal Assent	—
Law and Justice Legislation Amendment Act (No. 4) 1992	143, 1992	7 Dec 1992	s 3: Royal Assent *(n)*	—
Native Title Act 1993	110, 1993	24 Dec 1993	s 216–219: 1 Jan 1994 (gaz 1993, No. S402) *(o)*	s 216
Law and Justice Legislation Amendment Act 1994	84, 1994	23 June 1994	s 36–44: Royal Assent *(p)*	s 37, 39 and 43
Evidence and Procedure (New Zealand) (Transitional Provisions and Consequential Amendments) Act 1994	112, 1994	16 Sept 1994	s 1 and 2: Royal Assent Remainder: 1 Apr 1995 (s 2(2) and gaz 1995, GN8)	s 3
Evidence (Transitional Provisions and Consequential Amendments) Act 1995	3, 1995	23 Feb 1995	s 21 and 22: 18 Apr 1995 *(q)*	s 14

Authorised Version C2016C00388 registered 02/05/2016

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment Act (No. 1) 1995	175, 1995	16 Dec 1995	16 Dec 1995	—
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 2 (item 56): *(r)* Sch 5 (items 55–58): Royal Assent *(r)*	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 16 (items 4–28, 62–89): 25 May 1997 *(s)* Sch 16 (item 90): Royal Assent *(s)*	
as amended by				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Sch 3 (items 1, 2): *(t)*	—
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Sch 17: *(u)*	—
Law and Justice Legislation Amendment Act 1999	125, 1999	13 Oct 1999	Sch 14 (item 1): 25 May 1997 *(ua)*	—
Law and Justice Legislation Amendment Act 1997	34, 1997	17 Apr 1997	Sch 8 (items 1–4): *(v)* Sch 8 (items 5–19): Royal Assent *(v)*	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (item 780): 1 Jan 1998 (s 2(2) and gaz 1997, No. GN49)	—
Native Title Amendment Act 1998	97, 1998	27 July 1998	Sch 2 (items 102, 103): 30 Sept 1998 (s 2(5) and gaz 1998, No. S428)	—

Authorised Version C2016C00388 registered 02/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Law and Justice Legislation Amendment Act 1999	125, 1999	13 Oct 1999	Sch 7: 13 Oct 1999 (s 2(1))	—
Human Rights Legislation Amendment Act (No. 1) 1999	133, 1999	13 Oct 1999	s 1–3 and 21: Royal Assent s 22 and Sch 1 (items 53, 60): 10 Dec 1999 (gaz 1999, No. S598) Remainder: 13 Apr 2000	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 462–471): 5 Dec 1999 (s 2(1), (2))	—
Federal Magistrates (Consequential Amendments) Act 1999	194, 1999	23 Dec 1999	Sch 12: 23 Dec 1999 (s 2(1))	—
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 28: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)
Jurisdiction of Courts Legislation Amendment Act 2002	70, 2002	3 Sept 2002	Sch 1 and 2: 14 Oct 2002 (gaz 2002, No. GN40) Remainder: Royal Assent	Sch. 1 (items 12–15) and Sch. 2 (item 25)

Authorised Version C2016C00388 registered 02/05/2016

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003	140, 2003	17 Dec 2003	s 4 and Sch 1 (items 23, 24): 1 Jan 2005 (s 2(1) items 2, 3)	s 4
Law and Justice Legislation Amendment Act 2004	62, 2004	26 May 2004	Sch 1 (items 18–20): 27 May 2004	Sch. 1 (item 20)
Migration Litigation Reform Act 2005	137, 2005	15 Nov 2005	Sch 1: 1 Dec 2005 Remainder: Royal Assent	Sch. 1 (items 40, 42–44)
Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006	23, 2006	6 Apr 2006	Sch 2 (items 3, 4) and Sch 4 (item 4): 4 May 2006	Sch 2 (item 4)
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Sch 1 (items 65–72): Royal Assent	—
Fair Work (Transitional Provisions and Consequential Amendments) Act 2009	55, 2009	25 June 2009	Sch 17 (items 1–9, 19): 1 July 2009 (s 2(1))	Sch 17 (item 19)
Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009	106, 2009	6 Nov 2009	Sch 1 (items 2–5, 26–31, 33–59, 64–97): 4 Dec 2009	—
Access to Justice (Civil Litigation Reforms) Amendment Act 2009	117, 2009	4 Dec 2009	Sch 1, Sch 2, Sch 3 (items 7–10, 14) and Sch 4: 1 Jan 2010 Sch 5: Royal Assent	Sch 1 (item 12), Sch 2 (item 33) and Sch 3 (item 14)

Authorised Version C2016C00388 registered 02/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Federal Justice System Amendment (Efficiency Measures) Act (No. 1) 2009	122, 2009	7 Dec 2009	Sch 1 and Sch 3 (items 3, 5): Royal Assent	Sch 1 (item 8) and Sch. 3 (item 5) [in part]
Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010	36, 2010	13 Apr 2010	s 4: 13 Apr 2010 (s 2(1) item 1) Sch 2 (items 3–9): 11 Oct 2013 (s 2(1) item 3)	s. 4 and Sch. 2 (item 9)
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 57–60, 161): 1 Jan 2011	—
Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011	3, 2011	2 Mar 2011	Sch 2 (item 22): 3 Mar 2011	—
as amended by				
Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010	36, 2010	13 Apr 2010	Sch 2 (item 24): never commenced (s 2(1) item 4)	—
as amended by				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (item 44): 2 Mar 2011 (s 2(1))	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 593–596) and Sch 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)

Authorised Version C2016C00388 registered 02/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 85–87): 1 July 2011 (s 2(1) item 2)	—
Parliamentary Counsel and Other Legislation Amendment Act 2012	107, 2012	22 July 2012	Sch 2 (item 9): 1 Oct 2012 (s 2(1) item 2)	—
Navigation (Consequential Amendments) Act 2012	129, 2012	13 Sept 2012	Sch 2 (item 14): 1 July 2013 (s 2(1))	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (item 55): 22 Sept 2012 (s 2)	—
Access to Justice (Federal Jurisdiction) Amendment Act 2012	186, 2012	11 Dec 2012	Sch 1 and Sch 2 (items 2–5, 11, 12(1), (2)): 12 Dec 2012 (s 2(1) item 2) Sch 3 (items 5–8, 11, 12(3), (4)): 11 June 2013 (s 2(1) item 3)	Sch 1 (item 4), Sch 2 (items 11, 12(1), (2)) and Sch 3 (items 11, 12(3), (4))
Courts Legislation Amendment (Judicial Complaints) Act 2012	187, 2012	11 Dec 2012	Sch 1 (items 14–23): 12 Apr 2013 (s 2(1) item 2)	Sch 1 (item 23)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 311–313), Sch 2 (item 1) and Sch 3 (item 64): 12 Apr 2013 (s 2(1) items 2, 3, 13) Sch 3 (item 63): never commenced (s 2(1) item 12)	—

Authorised Version C2016C00388 registered 02/05/2016

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 43), Sch 9 (items 21–28) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Federal Courts Legislation Amendment Act 2015	9, 2015	25 Feb 2015	Sch 1: 26 Feb 2015 (s 2)	Sch 1 (items 7, 9, 11)
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 1 (items 140–143, 166–169, 171–177, 179): 5 Mar 2016 (s 2(1) item 2)	Sch 1 (items 166–169, 171–177, 179)

Authorised Version C2016C00388 registered 02/05/2016

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 3 (item 1): 5 Mar 2016 (s 2(1) item 8)	—
Passports Legislation Amendment (Integrity) Act 2015	122, 2015	10 Sept 2015	Sch 1 (item 101): 8 Oct 2015 (s 2(1) item 2)	—
Civil Law and Justice (Omnibus Amendments) Act 2015	132, 2015	13 Oct 2015	Sch 1 (items 39–54): 14 Oct 2015 (s 2(1) item 2)	Sch 1 (item 54)
Courts Administration Legislation Amendment Act 2016	24, 2016	18 Mar 2016	Sch 1 (items 1–62): 1 July 2016 (s 2(1) item 2) Sch 1 (items 63, 64): 1 Jan 2018 (s 2(1) item 3) Sch 6: 18 Mar 2016 (s 2(1) item 9)	Sch 6
Trade Legislation Amendment Act (No. 1) 2016	31, 2016	23 Mar 2016	Sch 2 (item 19): 1 May 2016 (s 2(1) item 3)	—

(a) The *Federal Court of Australia Act 1976* 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 *Federal Court of Australia Act 1976* was amended by Part XXIII (sections 154 and 155) only of the *Statute Law (Miscellaneous Amendments) Act (No. 1) 1982*, subsection 2(12) of which provides as follows:

Authorised Version C2016C00388 registered 02/05/2016

(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 *Federal Court of Australia Act 1976* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1983*, 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.

(d) The *Federal Court of Australia Act 1976* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 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.

(e) The *Federal Court of Australia Act 1976* 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.

(f) The *Federal Court of Australia Act 1976* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(20) of which provides as follows:

(20) The amendment of the *Federal Court of Australia Act 1976* made by this Act shall come into operation on a day to be fixed by Proclamation.

(g) The *Federal Court of Australia Act 1976* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, 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.

(h) The *Federal Court of Australia Act 1976* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, 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.

(i) The *Federal Court of Australia Act 1976* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, 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.

Authorised Version C2016C00388 registered 02/05/2016

(j) The *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988* was amended by Part XI (sections 34 and 35) only of the *Law and Justice Legislation Amendment Act 1988*, subsection 2(6) of which provides as follows:

(6) Part XI shall be taken to have commenced on 5 April 1988.

(k) The *Federal Court of Australia Act 1976* was amended by Part 12 (sections 35–37) only of the *Law and Justice Legislation Amendment Act 1989*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

(l) The *Federal Court of Australia Act 1976* was amended by section 49 only of the *Law and Justice Legislation Amendment Act 1990*, 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 *Federal Court of Australia Act 1976* was amended by the Schedule only of the *Law and Justice Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.

(n) The *Federal Court of Australia Act 1976* was amended by section 3 only of the *Law and Justice Legislation Amendment Act (No. 4) 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.

(o) The *Federal Court of Australia Act 1976* was amended by sections 216–219 only of the *Native Title Act 1993*, subsection 2(2) of which provides as follows:

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(p) The *Federal Court of Australia Act 1976* was amended by sections 36–44 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.

(q) The *Federal Court of Australia Act 1976* was amended by sections 21 and 22 only of the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsections 2(10) and (11) of which provide as follows:

Authorised Version C2016C00388 registered 02/05/2016

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

(11) Section 22 of this Act commences on the day on which those provisions of Part VA of the *Evidence Act 1905* that may be repealed under subsection 3(1) of this Act are so repealed.

Sections 21 and 22 commenced on 18 April 1995.

(r) The *Federal Court of Australia Act 1976* was amended by Schedule 2 (item 56) and Schedule 5 (items 55–58) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:

(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

(2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.

Item 56 is taken to have commenced immediately after the commencement of the Schedule to the *Evidence and Procedure (New Zealand) (Transitional Provisions and Consequential Amendments) Act 1994*.

The Schedule commenced on 1 April 1995 (*see Gazette* 1995, No. GN8).

(s) The *Federal Court of Australia Act 1976* was amended by Schedule 16 (items 4–28 and 62–90) 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, items 2 and 3 of Schedule 12, item 90 of Schedule 16 and the items of Schedule 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.

(t) *The Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only 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.

Authorised Version C2016C00388 registered 02/05/2016

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

(u) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 17 only of the *Law and Justice Legislation Amendment Act 1997*, subsection 2(5) of which provides as follows:

(5) Schedule 17 commences immediately after the commencement of item 75 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

Item 75 of Schedule 16 commenced on the 25 May 1997.

(ua) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 14 (item 1) only of the *Law and Justice Legislation Amendment Act 1999*, subsection 2(7) of which provides as follows:

(7) Item 1 of Schedule 14 is taken to have commenced on 25 May 1997, immediately after the commencement of item 28 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

(v) The *Federal Court of Australia Act 1976* was amended by Schedule 8 only of the *Law and Justice Legislation Amendment Act 1997*, subsections 2(1) and (4) of which provide as follows:

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

(4) Items 1 to 4 of Schedule 8 commence immediately after the commencement of item 19 of Schedule 16 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

Item 19 of Schedule 16 commenced on the 25 May 1997.

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
Part I	
s. 4	am. No. 60, 1996; No. 70, 2002; No 55, 2009; No 106, 2009; No 117, 2009; No 122, 2009; No. 58, 2011; No 186, 2012; No 187, 2012; No. 13, 2013; No 9, 2014; No 132, 2015; No 24, 2016
s. 4A	ad. No. 24, 2001
Part II	
Part II heading	rs. No. 60, 1996
Division 1	
Division 1 heading	ad. No. 60, 1996
s. 5	am. No. 141, 1987; No. 60, 1996
s. 6	am. No. 87, 1979; No. 49, 1992; No 43, 1996; No 60, 1996; No. 117, 2009
s. 6A	ad. No. 55, 2009
s. 7	am. No. 60, 1996; No. 55, 2009
s. 8	am. No. 60, 1996
s. 9	am. No 43, 1996; No 60, 1996
s. 11	am. No. 43, 1996
s. 13	am. No. 61, 1981; No. 43, 1996
	rep. No. 60, 1996
	ad. No. 55, 2009
s. 14	am. No. 61, 1981; No 43, 1996; No 60, 1996
s. 15	am. No. 87, 1979; No 43, 1996; No 60, 1996 (as am by No 125, 1999); No 55, 2009; No 117, 2009; No. 187, 2012
s. 15A	ad. No. 8, 1988
	am. No. 60, 1996; No 24, 2016
s. 16	am. No 43, 1996; No 60, 1996
s. 17	am. No. 186, 2012
Division 2	ad. No. 60, 1996
	rep. No. 70, 2002

Authorised Version C2016C00388 registered 02/05/2016

Provision affected	How affected
s. 18AA	ad. No. 60, 1996
	rep. No. 70, 2002
s. 18AB	ad. No. 60, 1996
	am. No. 34, 1997; No. 97, 1998; No. 133, 1999
	rep. No. 70, 2002
ss. 18AC–18AH	ad. No. 60, 1996
	rep. No. 70, 2002
s. 18AI	ad. No. 60, 1996
	am. No. 146, 1999
	rep. No. 70, 2002
ss. 18AJ–18AM	ad. No. 60, 1996
	rep. No. 70, 2002
Part IIA	
Part IIA	ad. No. 157, 1989
Division 1	
Division 1 heading	am. No. 60, 1996
	rs No 24, 2016
s. 18A	ad. No. 157, 1989
	am. No. 60, 1996; No. 122, 2009; No 24, 2016
s. 18B	ad. No. 157, 1989
	am. No. 60, 1996; No 24, 2016
s 18BAA	ad No 24, 2016
s. 18BA	ad. No. 55, 2009
Division 1A	
Division 1A	ad No 62, 2014
	rep No 24, 2016
s. 18BB	ad. No 62, 2014
	rep No 24, 2016
Division 2	
Division 2 heading	rs No 24, 2016
s 18C	ad. No. 157, 1989

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
	am. No. 60, 1996
	rs No 24, 2016
s 18D	ad. No. 157, 1989
	am. No. 60, 1996; No 24, 2016
s. 18E	ad. No. 157, 1989
	am No 24, 2016
s. 18F	ad. No. 157, 1989
	am. No. 60, 1996; No. 159, 2001; No 24, 2016
s. 18G	ad. No. 157, 1989
	rs. No. 122, 1991
	am. No. 60, 1996; No. 146, 1999; No 24, 2016
s. 18H	ad. No. 157, 1989
	am No 24, 2016
s. 18J	ad. No. 157, 1989
	am. No. 60, 1996; No 24, 2016
s. 18K	ad. No. 157, 1989
	am. No. 122, 1991; No. 94, 1992; No. 26, 2008; No. 58, 2011; No 24, 2016
s. 18L	ad. No. 157, 1989
	am. No. 60, 1996; No 62, 2014; No 24, 2016
s. 18M	ad. No. 157, 1989
	am. No. 60, 1996; No. 46, 2011; No 24, 2016
Division 3	
s. 18N	ad. No. 157, 1989
	am. No. 60, 1996; No. 34, 1997; No. 146, 1999; No. 70, 2002; No 24, 2016
s. 18P	ad. No. 157, 1989
	am. No. 106, 2009
s. 18Q	ad. No. 157, 1989
	rs. No. 146, 1999
	rep No 24, 2016

Authorised Version C2016C00388 registered 02/05/2016

Provision affected	How affected
s. 18R	ad. No. 157, 1989
	rep No 24, 2016
Division 4	
s. 18S	ad. No. 157, 1989
	am. No. 60, 1996
	rs. No. 152, 1997
	am No 62, 2014; No 24, 2016
ss. 18T, 18U	ad. No. 157, 1989
	am. No. 60, 1996
	rep. No. 152, 1997
s. 18V	ad. No. 157, 1989
	rep. No. 136, 1991
s. 18W	ad. No. 157, 1989
	am. No. 60, 1996
s. 18X	ad. No. 157, 1989
	am No 24, 2016
s. 18XA	ad. No. 187, 2012
s. 18Y	ad. No. 143, 1992
	am. No. 60, 1996; No 24, 2016
Part IIB	
Part IIB	ad No 24, 2016
Division 1	
s 18Z	ad No 24, 2016
s 18ZA	ad No 24, 2016
Division 2	
s 18ZB	ad No 24, 2016
s 18ZC	ad No 24, 2016
s 18ZD	ad No 24, 2016
Division 3	
s 18ZE	ad No 24, 2016
s 18ZF	ad No 24, 2016

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
s 18ZG	ad No 24, 2016
Division 4	
s 18ZH	ad No 24, 2016
s 18ZI	ad No 24, 2016
s 18ZJ	ad No 24, 2016
Division 5	
s 18ZK	ad No 24, 2016
Part III	
Division 1	
Division 1	rs. No. 106, 2009
s. 19	am. No. 91, 1983
s. 20	am. No. 19, 1979; No. 76, 1986; No. 60, 1996; No. 70, 2002; No. 62, 2004; No 106, 2009; No 117, 2009; No 122, 2009
s. 20A	ad. No. 117, 2009
s. 21	am. No. 106, 2009
s. 22	am. No. 43, 1996
Division 1A	
Division1A	ad. No. 106, 2009
Subdivision A	
s. 23AA	ad. No. 106, 2009
s. 23AB	ad. No. 106, 2009
	am. No. 103, 2010
Subdivision B	
s 23BA	ad No 106, 2009
s 23BB	ad No 106, 2009
s 23BC	ad No 106, 2009
s 23BD	ad No 106, 2009
s 23BE	ad No 106, 2009
s 23BF	ad No 106, 2009
s 23BG	ad No 106, 2009
s 23BH	ad No 106, 2009

Authorised Version C2016C00388 registered 02/05/2016

Provision affected	How affected
	am No 132, 2015
Subdivision C	
s 23CA	ad No 106, 2009
	rs No 132, 2015
s 23CB	ad No 106, 2009
s 23CC	ad No 106, 2009
s. 23CD	ad. No 106, 2009; No 103, 2010
s 23CE	ad No 106, 2009
	am No 132, 2015
s 23CF	ad No 106, 2009
s 23CG	ad No 106, 2009
s 23CH	ad No 106, 2009
s 23CI	ad No 106, 2009
s 23CJ	ad No 106, 2009
s 23CK	ad No 106, 2009
s 23CL	ad No 106, 2009
s 23CM	ad No 106, 2009
s 23CN	ad No 106, 2009
s 23CO	ad No 106, 2009
s 23CP	ad No 106, 2009
s 23CQ	ad No 106, 2009
	am No 24, 2016
Subdivision D	
s. 23DA	ad. No. 106, 2009
s. 23DB	ad. No. 106, 2009
s. 23DC	ad. No. 106, 2009
s. 23DD	ad. No. 106, 2009
s. 23DE	ad. No. 106, 2009; No 136, 2012
s. 23DF	ad. No. 106, 2009
s. 23DG	ad. No. 106, 2009
	am No 132, 2015

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
s. 23DH	ad. No. 106, 2009
s. 23DI	ad. No. 106, 2009
s. 23DJ	ad. No. 106, 2009
	am. No. 129, 2012
s. 23DK	ad. No. 106, 2009
s. 23DL	ad. No. 106, 2009
s. 23DM	ad. No. 106, 2009
s. 23DN	ad. No. 106, 2009
s. 23DO	ad. No. 106, 2009
s. 23DP	ad. No. 106, 2009
s. 23DQ	ad. No. 106, 2009
s. 23DR	ad. No. 106, 2009
s. 23DS	ad. No. 106, 2009
s. 23DT	ad. No. 106, 2009
s. 23DU	ad. No. 106, 2009
s. 23DV	ad. No. 106, 2009
	am No 132, 2015
s. 23DW	ad. No. 106, 2009
s. 23DX	ad. No. 106, 2009
s. 23DY	ad. No. 106, 2009
s. 23DZ	ad. No. 106, 2009
s. 23DZA	ad. No. 106, 2009
Subdivision E	
ss. 23EA–23EF	ad. No 106, 2009
s. 23EG	ad. No 106, 2009
	am No 46, 2011
s 23EH	ad No 106, 2009
s 23EI	ad No 106, 2009
s 23EJ	ad No 106, 2009
s 23EK	ad No 106, 2009
s 23EL	ad No 106, 2009

Authorised Version C2016C00388 registered 02/05/2016

Provision affected	How affected
	am No 132, 2015
s 23EM	ad No 106, 2009
	am No 132, 2015
Subdivision F	
ss. 23FA–23FK	ad. No. 106, 2009
Subdivision G	
s 23GA	ad No 106, 2009
s 23GB	ad No 106, 2009
	am No 132, 2015
Subdivision H	
s. 23HA	ad. No. 106, 2009
	am No 24, 2016
s. 23HB	ad. No. 106, 2009
s. 23HC	ad. No. 106, 2009
	am No. 186, 2012
s. 23HD	ad. No. 106, 2009
s. 23HE	ad. No. 106, 2009
Division 2	
Division 2 heading	rs. No. 106, 2009
s. 23P	ad. No. 106, 2009
s. 24	am. No. 72, 1984; No. 65, 1985; No. 34, 1997; No. 194, 1999; No. 70, 2002; No. 23, 2006; No 106, 2009; No 117, 2009; No. 186, 2012; No. 13, 2013; No 9, 2014
s. 25	am. No. 72, 1984; No. 115, 1990; No. 84, 1994; No. 60, 1996; No 125 , 1999; No 194, 1999; No. 70, 2002; No. 62, 2004; No. 137, 2005; No 117, 2009; No 122, 2009; No. 13, 2013
s. 26	am. No. 60, 1996; No. 117, 2009
s. 27	am. No. 84, 1994; No. 70, 2002
s. 28	am. No. 106, 2009
s. 29	am. No. 43, 1996; No. 194, 1999; No. 13, 2013
s. 29A	ad. No. 115, 1990
	rep. No. 106, 2009

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
s. 30A	ad. No. 11, 1990
	am. No. 34, 1997
	rep. No. 70, 2002
Division 2A	
Division 2A	ad. No. 106, 2009
Subdivision A	
s 30AA	ad No 106, 2009
s 30AB	ad No 106, 2009
s 30AC	ad No 106, 2009
s 30AD	ad No 106, 2009
s 30AE	ad No 106, 2009
	am No 132, 2015
s 30AF	ad No 106, 2009
s 30AG	ad No 106, 2009
s 30AH	ad No 106, 2009
s 30AI	ad No 106, 2009
s 30AJ	ad No 106, 2009
s 30AK	ad No 106, 2009
s 30AL	ad No 106, 2009
	am No 132, 2015
Subdivision B	
s 30BA	ad No 106, 2009
s 30BB	ad No 106, 2009
s 30BC	ad No 106, 2009
s 30BD	ad No 106, 2009
s 30BE	ad No 106, 2009
s 30BF	ad No 106, 2009
	am No 132, 2015
s 30BG	ad No 106, 2009
s 30BH	ad No 106, 2009

Authorised Version C2016C00388 registered 02/05/2016

Provision affected	How affected
Subdivision C	
ss. 30CA, 30CB	ad. No. 106, 2009
Subdivision D	
s. 30DA	ad. No. 106, 2009
Division 3	
s. 31	am. No. 60, 1996
s. 31A	ad. No. 137, 2005
	am. No. 106, 2009
s. 31B	ad. No. 106, 2009
s. 32	am. No. 106, 2009
s. 32AA	ad. No. 194, 1999
	am. No. 13, 2013
	rs. No. 13, 2013
s. 32AB	ad. No. 194, 1999
	am. No. 23, 2006; No. 106, 2009; No. 13, 2013
s. 32A	ad. No. 19, 1979
	am. No. 193, 1985; No. 70, 1990; No. 60, 1996; No. 70, 2002; No. 106, 2009; No 36, 2010
Part IIIA	ad. No. 70, 1990
	rep No 36, 2010
s. 32B	ad. No. 70, 1990
	am. No. 112, 1994; No. 103, 2010
	rep. No 36, 2010
s. 32C	ad. No. 70, 1990
	am. No. 112, 1994
	rep. No 36, 2010
s. 32D	ad. No. 70, 1990
	rs. No. 112, 1994
	rep. No 36, 2010
s. 32E	ad. No. 70, 1990
	am. No. 112, 1994

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
	rep. No 36, 2010
s. 32F	ad. No. 70, 1990
	am. No. 112, 1994
	rep. No 36, 2010
ss. 32G, 32H	ad. No. 70, 1990
	rep. No. 112, 1994
ss. 32J–32L	ad. No. 70, 1990
	rep. No. 112, 1994
s. 32M	ad. No. 70, 1990
	am. No. 112, 1994
	rep. No 36, 2010
s. 32N	ad. No. 70, 1990
	rs. No. 112, 1994
	rep. No 36, 2010
s. 32P	ad. No. 70, 1990
	am. No. 112, 1994; No. 3, 2011
	rep. No 36, 2010
s. 32Q	ad. No. 70, 1990
	am. No. 112, 1994
	rep. No 36, 2010
ss. 32R, 32S	ad. No. 70, 1990
	rep. No. 112, 1994
s. 32T	ad. No. 70, 1990
	rep. No 36, 2010
s. 32U	ad. No. 70, 1990
	rep. No 36, 2010
s. 32V	ad. No. 70, 1990
	rep. No 36, 2010
s. 32W	ad. No. 70, 1990
	am. No. 112, 1991; No. 34, 1997
	rep. No 36, 2010

Authorised Version C2016C00388 registered 02/05/2016

Provision affected	How affected
s. 32X	ad. No. 70, 1990
	rep. No 36, 2010
s. 32Y	ad. No. 70, 1990
	rep. No 36, 2010
s. 32Z	ad. No. 70, 1990
	rep. No 36, 2010
s. 32ZA	ad. No. 70, 1990
	rep. No 36, 2010
s. 32ZB	ad. No. 70, 1990
	rep. No 36, 2010
s. 32ZC	ad. No. 70, 1990
	rep. No 36, 2010
s. 32ZD	ad. No. 70, 1990
	rep. No. 112, 1994
s. 32ZE	ad. No. 70, 1990
	am. No. 24, 2001
	rep. No 36, 2010
s. 32ZF	ad. No. 70, 1990
	am. No. 112, 1994; No 43, 1996; No 60, 1996
	rep. No 36, 2010
Part IV	
s. 33	am. No. 11, 1984; No. 194, 1999; No. 117, 2009; No 9, 2014
Part IVA	
Part IVA	ad. No. 181, 1991
Division 1	
ss. 33A, 33B	ad. No. 181, 1991
Division 2	
ss. 33C–33H	ad. No. 181, 1991
ss. 33J–33N	ad. No. 181, 1991
ss. 33P–33W	ad. No. 181, 1991

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
ss. 33X, 33Y	ad. No. 181, 1991
Division 4	
s. 33Z	ad. No. 181, 1991
ss. 33ZA, 33ZB	ad. No. 181, 1991
Division 5	
ss. 33ZC, 33ZD	ad. No. 181, 1991
Division 6	
ss. 33ZE–33ZG	ad. No. 181, 1991
s. 33ZH	ad. No. 181, 1991
	rs. No. 103, 2010
s. 33ZJ	ad. No. 181, 1991
Part V	
s. 34	am. No 43, 1996; No 60, 1996; No. 117, 2009; No 24, 2016
s. 35	rs. No. 157, 1989
	am. No. 60, 1996
s. 35A	ad. No. 72, 1984
	am. No. 43, 1996; No. 146, 1999; No 24, 2016
s. 36	am. No 43, 1996; No 60, 1996; No 24, 2016
s. 37	rs. No. 19, 1979
	am. No. 70, 2002; No 24, 2016
Part VAA	
Part VAA	ad. No. 186, 2012
Division 1	
s. 37AA	ad. No. 186, 2012
s. 37AB	ad. No. 186, 2012
s. 37AC	ad. No. 186, 2012
s. 37AD	ad. No. 186, 2012
Division 2	
s. 37AE	ad. No. 186, 2012
s. 37AF	ad. No. 186, 2012

Authorised Version C2016C00388 registered 02/05/2016

Provision affected	How affected
s. 37AG	ad. No. 186, 2012
s. 37AH	ad. No. 186, 2012
s. 37AI	ad. No. 186, 2012
s. 37AJ	ad. No. 186, 2012
s. 37AK	ad. No. 186, 2012
s. 37AL	ad. No. 186, 2012
Part VAAA	
Part VAAA	ad. No. 186, 2012
Division 1	
s. 37AM	ad. No. 186, 2012
s. 37AN	ad. No. 186, 2012
Division 2	
s. 37AO	ad. No. 186, 2012
	am No 24, 2016
s. 37AP	ad. No. 186, 2012
	am No 24, 2016
Division 3	
s. 37AQ	ad. No. 186, 2012
	am No 24, 2016
s. 37AR	ad. No. 186, 2012
s. 37AS	ad. No. 186, 2012
s. 37AT	ad. No. 186, 2012
Part VA	
Part VA	ad. No. 110, 1993
ss. 37A–37C	ad. No. 110, 1993
s. 37D	ad. No. 110, 1993
	am. No. 159, 2001
s. 37E	ad. No. 110, 1993
	am. No. 60, 1996
s. 37F	ad. No. 110, 1993
	am. No. 146, 1999

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
ss. 37G, 37H	ad. No. 110, 1993
s. 37I	ad. No. 110, 1993
	am. No. 26, 2008; No. 58, 2011
ss. 37J, 37K	ad. No. 110, 1993
s. 37L	ad. No. 110, 1993
	am. No. 60, 1996
Part VB	
Part VB	ad. No. 117, 2009
s 37M	ad. No. 117, 2009
s 37N	ad. No. 117, 2009
s. 37P	ad. No. 117, 2009
Part VI	
s 39	am No 106, 2009
s 40	am. No. 106, 2009
s. 41	am. No. 106, 2009; No 24, 2016
s. 42	am. No. 43, 1996; No. 24, 2001
	rep. No. 106, 2009
s. 43	am. No. 143, 1992; No 55, 2009; No 106, 2009; No 117, 2009; No. 186, 2012; No 9, 2015
s. 44	am. No. 3, 1995; No. 125, 1999; No 24, 2016
s. 45	am. No. 61, 1981; No. 43, 1996; No. 125, 1999; No. 70, 2002; No. 106, 2009; No 24, 2016; No 31, 2016
s. 46	am. No. 43, 1996; No. 106, 2009; No 186, 2012
s. 47	am. No. 19, 1979; No. 84, 1994; No. 43, 1996; No. 70, 2002; No. 106, 2009
s. 47A	ad. No. 70, 2002
	am. No. 106, 2009; No 36, 2010
s. 47B	ad. No. 70, 2002
	am No 36, 2010
s. 47C	ad. No. 70, 2002
s. 47D	ad. No. 70, 2002

Authorised Version C2016C00388 registered 02/05/2016

Provision affected	How affected
s. 47E	ad. No. 70, 2002
s. 47F	ad. No. 70, 2002
s. 47G	ad. No. 70, 2002
	am No 36, 2010
s. 48	am. No. 106, 2009
s. 49	am. No. 19, 1979; No. 61, 1981; No. 43, 1996
	rs. No. 117, 2009
s. 50	am. No. 106, 2009
	rep. No. 186, 2012
s. 51	am. No. 43, 1996
s. 51A	ad. No. 165, 1984
	am. No. 115, 1990
s. 52	am. No. 115, 1990
s. 53A	ad. No. 113, 1991
	am. No. 175, 1995; No. 34, 1997; No 106, 2009; No 117, 2009
ss. 53AA, 53AB	ad. No. 175, 1995
	am. No. 60, 1996
ss. 53B, 53C	ad. No. 113, 1991
s. 54	am. No. 113, 1991; No. 175, 1995
s 54A	ad. No. 122, 2009
s 54B	ad. No. 122, 2009
s 55A	ad No 9, 2015
s. 56	am. No. 115, 1990; No. 43, 1996; No. 106, 2009
s. 57	am. No. 43, 1996
s. 58	am. No. 43, 1996; No. 194, 1999; No. 24, 2001
Part VIA	
Part VIA	ad. No. 106, 2009
Division 1	
ss. 58AA–58AM	ad. No. 106, 2009
Division 2	
ss. 58BA–58BG	ad. No. 106, 2009

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
Part VIB	
Part VIB	ad. No. 106, 2009
Division 1	
s. 58CA	ad. No. 106, 2009
Division 2	
s. 58DA	ad. No. 106, 2009
s. 58DB	ad. No. 106, 2009
	am. No. 103, 2010
s 58DC	ad. No. 106, 2009
	am No 122, 2015
s 58DD	ad. No. 106, 2009
	am No 24, 2016
s 58DE	ad. No. 106, 2009
	am No 24, 2016
s 58DF	ad. No. 106, 2009
s 58DG	ad. No. 106, 2009
s 58DH	ad. No. 106, 2009
Division 3	
ss. 58EA–58EC	ad. No. 106, 2009
Division 4	
s 58FA	ad. No. 106, 2009
s 58FB	ad. No. 106, 2009
	am No 24, 2016
s 58FC	ad. No. 106, 2009
s 58FD	ad. No. 106, 2009
	am No 24, 2016
s 58FE	ad. No. 106, 2009
Division 5	
ss. 58GA–58GD	ad. No. 106, 2009
Division 6	
ss. 58HA, 58HB	ad. No. 106, 2009

Authorised Version C2016C00388 registered 02/05/2016

Endnote 4—Amendment history

Provision affected	How affected
Part VII	
s. 59	am. No. 26, 1982; No. 99, 1988; No 11, 1990; No 70, 1990; No. 113, 1991; No. 110, 1993; No 84 , 1994; No 112, 1994; No. 3, 1995; No. 60, 1996; No. 70, 2002; No. 140, 2003; No 106, 2009; No 122, 2009; No. 107, 2012; No 36, 2013; No 10, 2015; No 24, 2016
s. 59A	ad. No. 140, 2003
	am No 10, 2015
s. 60	am. No 106, 2009; No. 125, 1999
The Schedule	
The Schedule	am. No. 60, 1996

Authorised Version C2016C00388 registered 02/05/2016

Endnote 5—Miscellaneous

Subsection 2(2)—The date fixed by Proclamation was 1 February 1977 (*see Gazette* 1977, No. S3).

Authorised Version C2016C00388 registered 02/05/2016