

# FEDERAL COURT OF AUSTRALIA ACT 1976

## No. 156 of 1976

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# FEDERAL COURT OF AUSTRALIA ACT 1976

## No. 156 of 1976

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

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:—

### PART I—PRELIMINARY

1. This Act may be cited as the *Federal Court of Australia Act 1976*.<sup>1</sup> Short title.

2. (1) This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commencement.

(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. This Act extends to every external Territory. Extension to Territories.

4. In this Act, unless the contrary intention appears— Interpretation.

“Chief Judge” means the Chief Judge of the Court, and includes a Judge for the time being performing the duties and exercising the powers of the Chief Judge;

“commencing day” means the day fixed under sub-section 2 (2);

“Court” means the Federal Court of Australia established by this Act;

“Division” means a Division of the Court;

“Full Court” means a Full Court in a Division of the Court constituted in accordance with section 14;

“Judge” means a Judge of the Court (including the Chief Judge) and, in the expression “the Court or a Judge”, means a Judge sitting in Chambers;

“judgment” means a judgment, decree or order, whether final or interlocutory, or a sentence;

“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;

“suit” includes any action or original proceeding between parties.

PART II—CONSTITUTION OF THE FEDERAL COURT OF  
AUSTRALIA

Creation of Court.      5. (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 Judge and such other Judges as from time to time hold office in accordance with this Act.

Appoint-  
ment,  
removal and  
resignation  
of Judges.

6. (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 removal on the ground of proved misbehaviour or incapacity.

(2) A person shall not be appointed as a Judge unless he is or has been a Judge of another court created by the Parliament 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.

(3) The Governor-General may, in the commission of appointment of the Judge or, with the consent of the Judge, at a later time, assign a Judge, other than the Chief Judge, to one of the Divisions and may, with the consent of the Judge but not otherwise, vary any such assignment.

(4) A Judge may resign his office by writing under his 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.

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

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

Acting Chief  
Judge.

7. Whenever—

(a) the Chief Judge is absent from Australia or from duty; or

(b) there is a vacancy in the office of Chief Judge,

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 Judge, and, while performing those duties and exercising those powers, shall, for the purposes of this Act, be deemed not to be attached to either Division of the Court.

8. The Chief Judge 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 them took effect on the same date, according to the precedence assigned to them by their commissions. Seniority.

9. (1) The Chief Judge 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. Salary and allowances of Judges.

(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 continuance in office.

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

11. A Judge shall, before proceeding to discharge the duties of his 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. Oath or affirmation of office.

12. 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. Place of sitting.

13. (1) For the purposes of the organization and conduct of the business of the Court, the Court comprises 2 Divisions, namely, the Industrial Division and the General Division, and every proceeding in the Court shall be instituted, heard and determined in one of those Divisions. Divisions of Court.

(2) Jurisdiction of the Court that is required by any Act to be exercised in the Industrial Division, and jurisdiction incidental to the exercise of any such jurisdiction, shall be exercised in the Industrial Division, and all other jurisdiction of the Court shall be exercised in the General Division.

(3) A Judge (including the Chief Judge) who is not attached to a Division of the Court may take part in the exercise of the jurisdiction of the Court in either Division but, subject to sub-section (4), a Judge who is attached to a Division of the Court shall take part in the exercise of the jurisdiction of the Court in that Division only.

(4) Where he considers that circumstances make it desirable to do so, the Chief Judge may, with the consent of the Judge concerned, arrange for a Judge who is attached to a Division of the Court to take part

in the exercise of the jurisdiction of the Court in the other Division of the Court, and the Judge may take part in the exercise of that jurisdiction accordingly.

Manner in which Court may be constituted.

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

(2) A Full Court in a Division consists of 3 or more Judges sitting together or, to the extent permitted by sub-section (3), of 2 Judges sitting together, and, subject to sub-sections (3) and (4) a Full Court in a Division shall include not less than 3 Judges other than Judges attached to the other Division.

(3) Where, after a Full Court (including a Full Court constituted in accordance with this sub-section) 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 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 sub-section (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 sub-section to 3 Judges shall be read as a reference to 5 Judges and the reference in that sub-section 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 sub-section (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.

Arrangement of business of Court.

**15.** (1) The Chief Judge is responsible for ensuring the orderly and expeditious discharge of the business of the Court and accordingly may subject to this Act and to such consultation with the Judges as is appropriate and practicable, make arrangements as to the Judge or Judges who is or are to constitute the Court in particular matters or classes of matters.

(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 Judge of the Federal Court of Australia and the Chief Judge 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 Judge of the Federal Court of Australia shall consult with the Judge concerned before making any such arrangements.

(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 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 Judge of the Federal Court of Australia and the Chief Judge of that Supreme Court, but the Chief Judge of that Supreme Court shall consult with the Judge concerned before making any such arrangements.

16. 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—

Court  
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 Judge or, if he is not a member of the Full Court, the opinion of the senior Judge who is a member of the Full Court, shall prevail.

17. (1) Except where, as authorized by this section 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.

Exercise of  
jurisdiction  
in open court  
and in  
Chambers.

(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.

Powers of Court to extend to whole of Australia.

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

### PART III—JURISDICTION OF THE COURT

#### *Division 1—Original Jurisdiction*

Original jurisdiction.

**19.** (1) The Court has such original jurisdiction as is vested in it by laws made by the Parliament, being jurisdiction in respect of matters arising under 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.

Exercise of original jurisdiction.

**20.** (1) Except as otherwise provided by this Act or any other Act—

(a) the original jurisdiction of the Court in the Industrial Division shall be exercised by a Full Court; and

(b) the original jurisdiction of the Court in the General Division shall be exercised by a single Judge.

(2) The jurisdiction of the Court in a matter coming before the Court from the 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.

Declarations of right.

**21.** (1) The Court may, 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.

Determination of matter completely and finally.

**22.** 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 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.

Making of orders and issue of writs.

**23.** 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.



*Division 2—Appellate and related Jurisdiction*

**24.** (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—

Appellate jurisdiction.

- (a) appeals from judgments of the Court constituted by a single Judge;
- (b) appeals from judgments of the Supreme Court of a Territory; and
- (c) in such cases as are provided by any other Act, appeals from judgments of a court of a State, other than a Full Court of the Supreme Court of a State, exercising federal jurisdiction.

(2) On or after the commencing day an appeal shall not be brought to the High Court from a judgment of the Supreme Court of a Territory except—

- (a) in accordance with special leave given by the High Court on or after the commencing day; or
- (b) in accordance with leave or special leave given by the High Court or the Supreme Court before the commencing day.

(3) Subject to sub-section (4), an appeal does not lie to the Court from a judgment of the Supreme Court of a Territory given before the commencing day.

(4) Where, immediately before the commencing day, a person has a right to appeal (otherwise than in accordance with leave or special leave referred to in sub-section (2)), or to seek leave or special leave to appeal, to the High Court from a judgment of the Supreme Court of a Territory given before the commencing day, that right is, by force of this section, converted into a corresponding right to appeal, or to seek leave or special leave to appeal, to the Court.

(5) A reference in this section to the Full Court of the Supreme Court of a State shall be read as a reference to the Supreme Court of a State when constituted by 2 or more judges, and includes the Supreme Court of a State when so constituted for the purpose of sitting as the Court of Appeal of the State.

**25.** (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.

Exercise of appellate jurisdiction.

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

(3) Except where the Chief Judge 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, other than an additional 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 may be exercised by one Judge or by a Full Court.

(6) The Court constituted by a single Judge sitting in either Division 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 of the Court in that Division and the Full Court has jurisdiction to hear and determine the case or question.

Cases stated  
and  
questions  
reserved.

**26.** (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 court for the consideration of the Court and the Court has jurisdiction to hear and determine the case or question.

(2) The jurisdiction of the Court under sub-section (1) shall be exercised in the Division in which an appeal from a judgment, in relation to the matter concerned, of the court stating the case or reserving the question would be heard and determined and, subject to any other Act—

- (a) where the court stating the case or reserving the question is a court of summary jurisdiction—may be exercised by one Judge or by a Full Court; or
- (b) where the court stating the case or reserving the question is not a court of summary jurisdiction—shall be exercised by a Full Court.

(3) A court referred to in sub-section (1) shall not state a case, or reserve or refer a question concerning a matter referred to in that sub-section, to a court other than the Court.

Evidence on  
appeal.

**27.** 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 on affidavit, by oral examination before the Court or a Judge or otherwise in accordance with section 46.

**28.** (1) Subject to any other Act, the Court may, in the exercise of its appellate jurisdiction—

Form of judgment on appeal.

- (a) affirm, reverse or vary the judgment appealed from;
- (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 in a civil proceeding, and enter judgment notwithstanding any such verdict or finding;
- (e) set aside the verdict and judgment in a trial on indictment and order a verdict of not guilty or other appropriate verdict to be entered;
- (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 sub-section (1) to execute the judgment of the Court in the same manner as if it were its own judgment.

(3) The powers specified in sub-section (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.

(5) The powers of the Court under sub-section (1) in an appeal (whether by the Crown or by the defendant) against a sentence in a criminal matter include the power to increase or decrease the sentence or substitute a different sentence.

**29.** (1) Where an appeal to the Court from another court has been instituted—

Stay of proceedings and suspension of orders.

- (a) the Court or a Judge, or a judge of that other court (not being a court of summary jurisdiction), may order, on such conditions (if any) as it or he 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 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.

New trials.

**30.** (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.

### *Division 3—General*

Contempt of court.

**31.** (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 and, where the contempt relates to the exercise of jurisdiction in a Division of the Court, the jurisdiction to punish that contempt shall be exercised in that Division of the 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.

Jurisdiction in associated matters.

**32.** (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 in which the jurisdiction of the Court is invoked.

(2) The jurisdiction conferred by sub-section (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 in respect of which an appeal from that judgment, or another judgment of that court, is brought.

## PART IV—APPEALS TO HIGH COURT

Appeals to High Court.

**33.** (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.

(3) Except as provided by the succeeding provisions of this section, 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) Subject to sub-section (5), an appeal may be brought as of right from a final judgment of a Full Court of the Court given or pronounced—

- (a) for the sum of \$20,000 or upwards; or
- (b) in any proceedings in which the matter in issue amounts to or is of the value of \$20,000 or upwards or which involve directly or indirectly a claim, demand or question to or respecting any property or any civil right amounting to or of the value of \$20,000 or upwards.

(5) An appeal shall not be brought from a judgment referred to in sub-section (4) on a ground that relates to the quantum of any damages in respect of death or personal injury unless the High Court has given special leave to appeal on that ground.

(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.

#### PART V—REGISTRIES, OFFICERS AND SEAL

34. (1) The Governor-General shall cause such Registries of the Court to be established as he 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. Registries.

(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 Governor-General may designate a Registry to be a Registry only in respect of a particular Division of the Court.

35. (1) The Attorney-General may appoint such officers of the Court as are referred to in this section and such other officers of the Court as are necessary. Officers of Court.

(2) The officers of the Court have such duties, powers and functions as are provided by this Act and the Rules of Court and such other duties and functions as the Chief Judge directs.

(3) There shall be a Registrar of the Court, a District Registrar of the Court in respect of each District Registry, and such Deputy Registrars and Deputy District Registrars of the Court as are necessary.

(4) There shall be a Sheriff of the Court, and such Deputy Sheriffs of the Court as are necessary.

(5) The Sheriff—

(a) is charged with the service and execution of all writs, orders, warrants, precepts, process and commands of the Court that are directed to him; and

(b) shall take, receive and detain all persons who are committed to his custody by the Court, and shall discharge all such persons when directed by the Court or otherwise required by law.

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

(7) The Sheriff or a Deputy Sheriff may authorize such persons as he thinks fit to assist him in the exercise of any power or the performance of any function.

Seal of  
Court.

**36.** (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 Judge directs.

(3) The Registrar shall have in his 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 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 Judge 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 sub-section (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.

Writs, &c.

**37.** All writs, commissions and process issued from the Court shall be—

(a) in the name of the Queen;

(b) under the seal of the Court;

(c) signed by the Registrar, a District Registrar or other officer acting with the authority of the Registrar or a District Registrar; and

(d) tested in the name of the Chief Judge.

## PART VI—GENERAL

**38.** (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. Practice and procedure.

(2) In so far as the provisions for the time being applicable in accordance with sub-section (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.** In every suit in the Court, unless the Court or a Judge otherwise orders, the trial shall be by a Judge without a jury. Trial without jury.

**40.** 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. Power of court to direct trial of issues with a jury.

**41.** (1) Subject to this section and to any other law of the Commonwealth, the laws in force in a State or Territory relating to— Juries.

- (a) the qualification of jurors;
- (b) the preparation of jury panels;
- (c) the summoning, attendance and impanelling 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 or sworn,

that apply for the purposes of the trial of civil proceedings in the Supreme Court of that State or Territory extend and shall be applied in civil 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 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.

Offences in relation to jurors.

**42.** (1) A person who has been served with a summons to attend as a juror or otherwise lawfully appointed to serve as a juror shall not, without reasonable excuse—

- (a) fail to attend in accordance with the summons or appointment; or
- (b) having attended in accordance with the summons or appointment, withdraw himself from the presence of the Court, without the permission of the Sheriff, before being discharged or excused by a Judge or the Sheriff.

Penalty: \$200 or imprisonment for 1 month.

(2) A person shall not personate, or attempt to personate, a juror for the purpose of sitting as that person on a jury.

Penalty: \$1,000 or imprisonment for 3 months.

(3) A person shall not—

- (a) corrupt, or attempt to corrupt, a juror;
- (b) except in accordance with this Act, make or promise a payment to a juror, or confer or promise to confer any other benefit on a juror, in relation to his service as a juror, other than a payment of the ordinary remuneration of the juror's employment; or
- (c) being a juror, accept such a payment or benefit.

Penalty: Imprisonment for 5 years.

(4) In this section, "juror" includes a person whose name is on a jury panel.

Costs.

**43.** (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 any other Act provides that costs shall not be awarded.

(2) Except as provided by any other Act, the award of costs is in the discretion of the Court or Judge.

Oaths and affirmations.

**44.** (1) A Judge may require and administer all necessary oaths and affirmations.

(2) A person may, for the purposes of any proceeding in the Court, make an affirmation instead of an oath.

(3) Subject to the Rules of Court, the forms of oaths and affirmations shall be the same, as nearly as practicable, as those that are used in the Supreme Court of the State or Territory in which the oath or affirmation is administered.



**45.** (1) An affidavit to be used in a proceeding in the Court may be sworn within the Commonwealth or a Territory before a person authorized to administer oaths for the purposes of the High Court or the Supreme Court of a State or Territory, a Judge of the Court, the Registrar or a Deputy Registrar, a justice of the peace, a commissioner for affidavits or a commissioner for declarations. Swearing of affidavits.

(2) An affidavit to be used in a proceeding in the Court may be sworn at a place outside the Commonwealth and the Territories before—

- (a) a Commissioner of the High Court authorized to administer oaths in that place for the purposes of the High Court;
- (b) a commissioner of the Supreme Court of a State or Territory for taking affidavits empowered and authorized to act in that place;
- (c) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, exercising his function in that place;
- (d) a notary public exercising his function in that place; or
- (e) a person qualified to administer an oath in that place, being a person certified by the person mentioned in any of paragraphs (b), (c) and (d), or by the superior court of that place to be so qualified.

(3) An affidavit sworn outside the Commonwealth and the Territories otherwise than before a person referred to in sub-section (2) may be used in a proceeding in the Court in circumstances provided by the Rules of Court.

**46.** The Court or a Judge may, for the purposes of any proceeding before it or him— Orders and commissions for examination of witnesses.

- (a) order the examination of a person upon oath 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 to take the testimony on oath of a person,

and the Court or a Judge may—

- (c) by the same or a subsequent order, give any necessary directions concerning the time, place and manner of the examination; and
- (d) empower any party to the proceeding to give in evidence in the proceeding the testimony so taken on such terms (if any) as the Court or Judge directs.

**47.** (1) In a 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. Oral and affidavit evidence.

(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 solicitor to such a document.

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

(4) Notwithstanding any order under sub-section (3), if a party to a cause desires in good faith that the maker of an affidavit (other than an affidavit referred to in sub-section (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.

(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 the foregoing provisions of this section and without prejudice to any other law that would, if this sub-section had not been enacted, expressly permit any testimony to be otherwise given, testimony at the trial of causes shall be given orally in court.

Change of  
venue.

**48.** 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.

Reserved  
judgments.

**49.** (1) When any proceeding, after being fully heard before a Full Court of the Court, is ordered to stand for judgment, it shall not be necessary that all the Judges before whom it was heard shall be present together in Court to declare their opinions thereon, but the opinion of any of them may be reduced to writing and may be read by any other Judge at any subsequent sitting of a Full Court of the Court at which judgment in the proceeding is appointed to be delivered.

(2) In any such case the question shall be decided in the same manner, and the judgment of the Court shall have the same force and effect, as if the Judge whose opinion is so read had been present in Court and declared his opinion in person.

Prohibition  
of publi-  
cation of  
evidence, &c.

**50.** The Court may, at any time during or after the hearing of a proceeding in the Court, make such order forbidding or restricting the publication of particular evidence, or the name of a party or witness, as appears to the Court to be necessary in order to prevent prejudice to the administration of justice or the security of the Commonwealth.

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

Formal defects not to invalidate.

(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 considers to be formal, or by reason of an irregularity.

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

Interest on judgment.

**53.** (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 or Territory to persons in whose favour a judgment of the Supreme Court of that State or Territory is given.

Enforcement of judgment.

(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.

**54.** (1) The Court may, upon application by a party to an award made in an arbitration in relation to a matter in which the Court has original jurisdiction, make an order in the terms of the award.

Arbitration awards.

(2) Subject to sub-section (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.

**55.** 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.

Actions by or against Sheriff.

**56.** (1) The Court or a Judge may order a plaintiff in a proceeding in the Court or an appellant in an appeal to the Court to give security for the payment of costs that may be awarded against him.

Security.

(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.

Receivers.

**57.** (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 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.

Offences by witness.

**58.** (1) A person duly served with a summons to appear as a witness before the Court shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to appear and report himself from day to day unless excused, or released from further attendance, by the Court.

Penalty: \$1,000 or imprisonment for 3 months.

(2) A person appearing as a witness before the Court shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question that he is required by the Court to answer; or
- (c) refuse or fail to produce a book or document that he is required by the Court or by a summons issued from the Court to produce.

Penalty: \$1,000 or imprisonment for 3 months.

(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.

## PART VII—RULES OF COURT AND REGULATIONS

**59.** (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. Rules of Court.

(2) In particular, the Rules of Court may make provision for or in relation to—

- (a) pleading;
- (b) appearance under protest;
- (c) interrogatories and discovery, production and inspection of documents;
- (d) the attendance of witnesses;
- (e) the administration of oaths and affirmations;
- (f) the custody of convicted persons;
- (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;
- (h) the issue by the Court of letters of request for the service in another country of any process of the Court;
- (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;
- (j) the enforcement and execution of judgments of the Court;
- (k) the stay of proceedings in, or under judgments of, the Court or another court;
- (l) the prevention or termination of vexatious proceedings;
- (m) the death of parties;
- (n) the furnishing of security;
- (o) the costs of proceedings in the Court;
- (p) the means by which particular facts may be proved and the mode in which evidence of particular facts may be given;
- (q) the forms to be used for the purposes of proceedings in the Court;
- (r) the time and manner of instituting appeals to the Court;
- (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.

(3) Rules of Court under this section 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) All Rules of Court under this section shall—

- (a) be notified in the *Gazette*;
- (b) take effect from the date of notification or from a later date fixed by or in accordance with the Rules; and
- (c) be laid before each House of the Parliament within 15 sitting days of that House after the making of the Rules.

(5) If either House of the Parliament, in pursuance of a motion of which notice has been given within 15 sitting days after any Rules of Court have been laid before that House, passes a resolution disallowing any rule, the rule so disallowed ceases to have effect.

Regulations  
relating to  
fees.

**60.** (1) The Governor-General may make regulations 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.

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## 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 Judge [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 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!"].

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## NOTE

1. Act No. 156, 1976; assented to 9 December 1976.