

High Court of Australia Act 1979

No. 137 of 1979

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High Court of Australia Act 1979

No. 137 of 1979

An Act to make provision with respect to the High Court of Australia.

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 *High Court of Australia Act 1979*.¹ Short title
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement
3. The following Acts are repealed: Repeal
 - High Court Procedure Act 1903*;
 - High Court Procedure Amendment Act 1903*;
 - High Court Procedure Act 1915*;
 - High Court Procedure Act 1921*;
 - High Court Procedure Act 1925*;
 - High Court Procedure Act 1933*.
4. (1) In this Act, unless the contrary intention appears— Interpretation
 - “appoint” includes “re-appoint”;
 - “approved bank” means the Reserve Bank of Australia or another bank for the time being approved by the Treasurer or a person authorized by the Treasurer to give approvals for the purposes of the provision in which the expression occurs;
 - “Chief Justice” includes a Justice for the time being performing the duties and exercising the powers of the Chief Justice;
 - “Clerk” means the Clerk of the Court;
 - “Court” means the High Court;
 - “Deputy Registrar” means a Deputy Registrar of the Court;
 - “Deputy Marshal” means a Deputy Marshal of the Court;
 - “Justice” means a Justice of the Court and includes the Chief Justice;
 - “Marshal” means the Marshal of the Court;
 - “Minister”, in relation to a State or the Northern Territory, means—
 - (a) in the case of a State—a Minister of the Crown of that State; or

(b) in the case of the Northern Territory—a person holding Ministerial Office under section 36 of the *Northern Territory (Self-Government) Act 1978*;

“proceeding” means any proceeding in the Court whether civil or criminal and whether in the original or appellate jurisdiction of the Court;

“Registrar” means the Registrar of the Court;

“Rules of Court” means Rules of Court under section 86 of the *Judiciary Act 1903*.

(2) Any reference in this Act to moneys or property does not include a reference to moneys or property received by the High Court in connection with a proceeding.

PART II—CONSTITUTION AND SEAT OF THE HIGH COURT

Division 1—Justices of the High Court

The High Court

5. The High Court is a superior court of record and consists of the Chief Justice and six other Justices appointed by the Governor-General by commission.

Consultation with State Attorneys-General on appointment of Justices

6. Where there is a vacancy in an office of Justice, the Attorney-General shall, before an appointment is made to the vacant office, consult with the Attorneys-General of the States in relation to the appointment.

Qualification of Justices

7. A person shall not be appointed as a Justice unless—

- (a) he is or has been a Judge of a court created by the Parliament or of a court of a State or Territory; or
- (b) he has been enrolled as a barrister or solicitor, as a barrister and solicitor, or as a legal practitioner, of the High Court or of the Supreme Court of a State or Territory for not less than 5 years.

Seniority

8. The Justices other than the Chief Justice have seniority according to the dates of their commissions or, where the commissions of two or more Justices bear the same date, according to the precedence assigned to them by their commissions.

Acting Chief Justice

9. Whenever—

- (a) the Chief Justice is absent from Australia or is unable or unavailable to perform the duties of his office; or
- (b) there is a vacancy in the office of Chief Justice,

the next senior Justice 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, and shall, during any period of absence of the Chief Justice from Australia or during a vacancy in the office of Chief Justice, be designated Acting Chief Justice.

10. A Justice is not capable of accepting or holding any other office of profit within Australia. Justices not to hold other office

11. A person who is appointed as a Justice after the commencement of this Act shall, before proceeding to discharge the duties of his office, take an oath or make an affirmation in accordance with the form in the Schedule. Oath or affirmation of allegiance and of office

12. (1) The Chief Justice and the other Justices shall receive salary and annual allowances at such respective rates as are fixed from time to time by the Parliament. Salary and allowances

(2) The salary and annual allowance of a Justice accrue from day to day and are payable monthly.

(3) The Chief Justice and the other Justices shall receive such respective allowances in respect of travelling expenses as are provided by the Parliament.

13. The salaries, annual allowances and other allowances referred to in section 12 are payable out of the Consolidated Revenue Fund, which, to the necessary extent, is appropriated accordingly. Appropriation

Division 2—Seat of the High Court

14. On and after a date to be fixed by Proclamation, the seat of the High Court shall be at the seat of Government in the Australian Capital Territory. Seat

15. Sittings of the High Court shall be held from time to time as required at the seat of the Court but the Court may sit at other places within Australia and the external Territories. Places of sittings

16. The High Court may pronounce judgment at a sitting of the Court held at a place other than the place at which the relevant proceeding was held by the Court. Judgment may be pronounced at any sitting

PART III—ADMINISTRATION OF THE HIGH COURT

17. (1) The High Court shall administer its own affairs subject to, and in accordance with, this Act. Administration of the Court

(2) The Court has power for the purposes of the Court to do all things that are necessary or convenient to be done for or in connection with the administration of its affairs and, without limiting the generality of the foregoing, has power—

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of real and personal property;
- (c) to take on hire, to exchange, and to accept on deposit or loan, library material, and also furnishings, equipment and goods needed for the purposes of the Court;
- (d) to control and manage any land or building occupied by the Court and any adjacent land or building that is declared by Proclamation to be part of the precincts of the Court;
- (e) to accept gifts, devises and bequests made to the Court upon trust and act as trustee of moneys or other property vested in the Court upon trust; and
- (f) to do such other things as it is authorized by this Act to do.

(3) Any real property, and any personal property (other than money), held by the Court shall be deemed to be the property of the Commonwealth.

(4) Section 66A of the *Lands Acquisition Act* 1955 applies in relation to the High Court as if the Court were a corporation referred to in that section.

(5) The Court may appoint committees consisting of Justices, or of Justices and other persons, for the purpose of advising the Court in relation to—

- (a) the exercise of the powers of the Court under this Act; or
- (b) the making of Rules of Court.

Clerk of the Court

18. There shall be a Clerk of the High Court, who shall be appointed by the Governor-General upon the nomination of the Court.

Functions and powers of the Clerk

19. (1) The Clerk has the function of acting on behalf of, and assisting, the Justices in the administration of the affairs of the High Court under section 17 and has such other functions as are conferred on him by this Act or are assigned to him by the Court.

(2) The Clerk has power to do all things that are necessary or convenient to be done for or in connection with the performance of his functions and, in particular, has power, on behalf of the Court, to give directions in writing for the purpose of regulating the conduct of persons on any land or in any building referred to in paragraph 17 (2) (d).

- (3) Where directions are given by the Clerk under sub-section (2)—
 - (a) a copy of the directions shall be published in the *Gazette*; and
 - (b) the directions have effect on and from the date of publication.

(4) The provisions of section 48 (except paragraphs (1) (a) and (b) and sub-section (2)) and section 49 of the *Acts Interpretation Act 1901* apply, by force of this section, to directions given under sub-section (2) of this section in like manner as those provisions apply to regulations.

(5) Nothing in the provisions applied by sub-section (4) affects the operation of a direction given under sub-section (2) at any time before the direction becomes void, or is disallowed, in accordance with those provisions.

(6) A person who contravenes or fails to comply with a direction in force under sub-section (2) is guilty of an offence.

Penalty: \$100.

(7) In the performance of his functions and the exercise of his powers the Clerk shall comply with any directions given to him by the Court.

(8) Nothing in this section affects the power of the Court to punish contempts of the Court.

20. (1) The Clerk holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment. Terms and conditions of appointment

(2) A person who has attained the age of 65 years shall not be appointed as Clerk, and a person shall not be appointed as Clerk for a period that extends beyond the date on which he will attain the age of 65 years.

(3) The Clerk holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Court with the concurrence of the Public Service Board.

21. (1) The Clerk shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed by Rules of Court. Remuneration and allowances

(2) The Clerk shall be paid such allowances as are prescribed by Rules of Court.

(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

(4) Sub-section 7 (9) of the *Remuneration Tribunals Act 1973* has effect in relation to the remuneration and allowances payable to the Clerk as if the High Court were a public statutory corporation and the Clerk held an office in the service of that corporation.

- Leave of absence** **22.** The High Court may grant leave of absence to the Clerk on such terms and conditions as to remuneration or otherwise as the Court determines.
- Resignation** **23.** The Clerk may resign his office by writing signed by him and delivered to the Governor-General.
- Termination of appointment** **24.** (1) The Governor-General may terminate the appointment of the Clerk by reason of the misbehaviour or the physical or mental incapacity of the Clerk.
- (2) If the Clerk—
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) is absent from duty, except with the leave of the Court, for 14 consecutive days or for 28 days in any 12 months; or
- (c) without the approval of the Court, engages in paid employment outside the duties of his office,
- the Governor-General shall terminate the appointment of the Clerk.
- (3) The powers of the Governor-General under sub-section (1) shall be exercised only in accordance with advice that is consistent with recommendations by the Court.
- Acting Clerk** **25.** (1) The High Court may appoint a person to act as Clerk—
- (a) during a vacancy in the office of Clerk, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Clerk is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office,
- but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of his appointment.
- (3) The Court may—
- (a) with the concurrence of the Public Service Board, determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Clerk; and
- (b) terminate such an appointment at any time.
- (4) Where a person is acting as Clerk in accordance with paragraph (1) (b) and the office of Clerk becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Court otherwise directs, the vacancy is filled or a period of

12 months from the date on which the vacancy occurred expires, whichever first happens.

(5) The appointment of a person to act as Clerk ceases to have effect if he resigns his office by writing signed by him and delivered to the Chief Justice.

(6) While a person is acting as Clerk, he has and may exercise all the powers of, and shall perform all the functions of, the Clerk under this Act or any other law.

(7) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed.

26. (1) In addition to the Clerk, there shall be the following officers Officers and employees
of the High Court:

- (a) a Registrar and such Deputy Registrars as the Court deems necessary; and
- (b) a Marshal and such Deputy Marshals as the Court deems necessary.

(2) The officers referred to in paragraphs (1) (a) and (b) shall be appointed by the Clerk.

(3) The Clerk may engage such employees as the Court considers necessary for the purposes of the Court.

(4) The terms and conditions of employment (including terms and conditions as to remuneration and allowances) of officers or employees appointed or engaged in accordance with this section are such as are determined by the Court with the concurrence of the Public Service Board.

(5) The offices of Registrar, Deputy Registrar, Marshal and Deputy Marshal are not public offices for the purposes of Part II of the *Remuneration Tribunals Act 1973*.

(6) The Clerk may, on behalf of the Court, arrange with the Permanent Head of a Department of the Australian Public Service, or with an authority of the Commonwealth, for the services of officers or employees of the Department or of the authority, as the case may be, to be made available for the purposes of the Court.

(7) The Deputy Registrars shall perform such duties in respect of any proceedings pending in the Court as are assigned to them by Rules of Court, by any order of the Court or by the Registrar.

Marshal and
Deputy
Marshals

27. (1) The Marshal—

- (a) is charged with the service and execution of all writs, summonses, 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.

(2) A Deputy Marshal may, subject to any directions of the Marshal, exercise any power or perform any function of the Marshal.

(3) The Marshal or a Deputy Marshal may authorize such persons as he thinks fit to assist him in the exercise of any power or performance of any function by him, and any act done by a person so appointed shall be deemed to be done by and under the authority of the Marshal or Deputy Marshal, as the case may be.

(4) If the Marshal or a Deputy Marshal is a party to a proceeding in the Court, all writs, summonses, orders, warrants, precepts, process and commands in the proceeding that should, in the ordinary course, be directed to the Marshal or Deputy Marshal shall be directed to such disinterested person as the Court appoints, and the person so appointed may execute and return them.

(5) The Minister may arrange with the appropriate Minister of a State or of the Northern Territory for an officer or officers of that State or Territory to perform the functions of a Deputy Marshal in that State or Territory.

(6) A copy of an arrangement made under sub-section (5) shall be published in the *Gazette*.

Registrar
and Deputy
Registrars
may
administer
oaths and
affirmations

28. The Registrar, the Deputy Registrars and any other persons authorized by Rules of Court may administer oaths and affirmations for the purposes of any proceedings in the Court.

Preservation
of rights

29. Where the Clerk, or an officer or employee appointed or engaged under section 26, was, immediately before his appointment or engagement, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

PART IV—REGISTRY AND PROCEDURE

30. (1) There shall be a Registry of the High Court, which shall be at the seat of the Court. Registry

(2) The Registry shall be under the control of the Registrar.

(3) There shall be an office of the Registry at the seat of the Court, at the capital city of each State, at Darwin in the Northern Territory and at such other places as the Court deems necessary.

(4) The Minister may arrange with the appropriate Minister of a State or of the Northern Territory for an officer or officers of that State or Territory to perform on behalf of the Court at any office in that State or Territory of the Registry of the Court all or any of the functions referred to in sub-section (6).

(5) The Chief Justice may arrange with the Chief Judge of the Federal Court of Australia for an officer or officers of the Federal Court of Australia to perform on behalf of the High Court at an office or offices of the Registry of the High Court referred to in the arrangement all or any of the functions referred to in sub-section (6).

(6) The functions to which an arrangement under sub-section (4) or (5) may relate are—

- (a) the receipt of documents to be lodged with or filed in the High Court;
- (b) the signing and issuing of writs, commissions and process;
- (c) the administration of oaths and affirmations for the purposes of any proceedings in the High Court; and
- (d) such other functions as are permitted by Rules of Court to be performed in pursuance of such an arrangement.

(7) Documents received at any office of the Registry for lodgment with or filing in the Court shall be deemed to be received at the Registry.

(8) A copy of an arrangement made under sub-section (4) or (5) shall be published in the *Gazette*.

(9) Where an office of the Registry is established at a place not specifically mentioned in sub-section (3), a notice stating that an office of the Registry has been established at that place shall be published in the *Gazette*.

31. (1) Subject to section 80 of the Constitution, the High Court may, at any stage of a proceeding, direct that the proceeding or a part of the proceeding be held or continued at a place specified in the order, subject to such conditions (if any) as the Court imposes. Transfer of proceedings

(2) The Rules of Court may make provision for the transmission of documents between offices of the Registry of the Court, including transmission by telegraph, telex or any similar means of communication.

Seals

32. (1) The High Court shall have a seal on which are inscribed the words "The Seal of the High Court of Australia".

(2) A duplicate of the seal of the Court shall be kept at each office of the Registry of the Court.

(3) Such other seals as are required for the business of the Court shall be kept and used at each office of the Registry and shall be in such form and kept in such custody as the Chief Justice directs.

(4) A document, a copy of a document or an exemplification purporting to be sealed with the seal of the High Court or a duplicate of that seal, or with a seal referred to in sub-section (3), is receivable in evidence without further proof of the seal.

Writs, &c.

33. All writs, commissions and process issued from the High Court shall be—

(a) in the name of the Queen;

(b) under the seal of the Court or a duplicate of that seal or such other seal as is prescribed by Rules of Court; and

(c) signed by—

(i) the Registrar or an officer acting with the authority of the Registrar; or

(ii) an officer authorized by an arrangement in force under sub-section 30 (4) or (5) or a person acting with the authority of such an officer.

Date of process

34. All writs, commissions and process issued from the High Court shall be dated as of the day on which they are issued.

PART V—FINANCE**Moneys appropriated for the Court**

35. (1) There are payable to the High Court such moneys as are appropriated by the Parliament for the purposes of the Court.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Court.

36. (1) The High Court shall prepare estimates, in such form as the Minister approves, of receipts and expenditure in respect of the administration of the affairs of the Court under section 17 for each financial year and, if so requested by the Minister, for any other period, and shall submit estimates so prepared to the Minister not later than such date as the Minister specifies. Estimates

(2) Moneys paid to the Court under section 35 shall not be expended otherwise than in accordance with the estimates of expenditure approved by the Minister.

37. Moneys paid to the High Court under section 35 shall be applied only— Application of moneys appropriated for the Court

- (a) in payment or discharge of the costs and expenses of the administration of the affairs of the Court under section 17; and
- (b) in payment of any remuneration and allowances payable under this Act to any person other than a Justice.

38. (1) A separate account or separate accounts shall be kept in the books of the High Court in respect of moneys held by the Court upon trust. Trust moneys

(2) Any moneys or other property held by the Court upon trust shall be dealt with in accordance with the powers and duties of the Court as trustee.

39. (1) Any moneys held by the Court other than— Other moneys

- (a) moneys held by the Court upon trust; and
- (b) moneys paid to the Court under section 35,

may be expended for the purposes of the Court.

(2) Moneys to which sub-section (1) applies that are not immediately required to be expended may be invested—

- (a) on deposit with an approved bank;
- (b) in securities of the Commonwealth; or
- (c) in any other manner approved by the Treasurer.

40. The High Court shall not, except with the approval of the Minister, enter into a contract under which the Court is to pay or to receive an amount exceeding \$100,000. Limit on contracts

41. (1) The Clerk may, on behalf of and in the name of the High Court, open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account. Bank accounts

(2) The Clerk shall pay all moneys received by the Court into an account referred to in this section.

Proper
accounts to
be kept

42. The High Court shall cause to be kept proper accounts and records of the transactions and affairs relating to the administration of the affairs of the Court under section 17 and shall do all things necessary to ensure that all payments out of the moneys held by the Court are correctly made and properly authorized and that adequate control is maintained over the assets held by, or in the custody of, the Court and over the incurring of liabilities by the Court.

Audit

43. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions relating to the administration of the affairs of the High Court under section 17 and the records relating to assets held by, or in the custody of, the Court and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts and records maintained by the Court relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Court.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts and records.

(6) The Auditor-General or a person authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence and is punishable, upon conviction, by a fine not exceeding \$200.

Exemption
from
taxation

44. The High Court is not subject to taxation under any law of the Commonwealth or of a State or Territory.

PART VI—MICELLANEOUS

45. Any judicial or other proceedings relating to matters arising out of the administration of the affairs of the High Court under section 17, including any proceedings relating to matters arising out of the performance of the functions or the exercise of the powers of the Clerk under this Act, may be instituted by or against the Commonwealth, as the case requires.

Proceedings in respect of administration of the Court

46. (1) Subject to this section, the powers of the High Court under this Act may be exercised by the Justices or by a majority of them.

Exercise of powers of the Court in administrative matters

(2) The Court may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Justices or a majority of them, delegate all or any of the powers of the Court under this Act (except this power of delegation) to any one or more of the Justices.

(3) A power so delegated, when exercised by the delegate or delegates, shall, for the purposes of this Act, be deemed to have been exercised by the Court.

(4) A delegation under this section does not prevent the exercise of a power by the Court.

(5) A decision of the Court, or of a delegate or delegates of the Court, in exercise of a power under this Act may be made known by the Chief Justice, who may give any directions or take any other action necessary to give effect to the decision.

47. (1) The High Court shall, as soon as practicable after 30 June in each year, prepare and submit to the Minister a report relating to the administration of the affairs of the Court under section 17 during the year that ended on that 30 June, together with financial statements in respect of that year in such form as the Minister for Finance approves.

Annual reports and financial statements

(2) Before submitting financial statements to the Minister under sub-section (1), the Court shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether, in his opinion, the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether, in his opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Court during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause a copy of the report and financial statements of the Court together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

Rules of
Court

48. The power of the Justices or of a majority of them to make Rules of Court under section 86 of the *Judiciary Act* 1903 extends to making any Rules of Court required or permitted by this Act to be made or necessary or convenient to be made for carrying into effect the provisions of this Act.

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 Justice*] of the High 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!"*].

NOTE

1. Act No. 137, 1979; assented to 23 November 1979.