



A.C.T. Supreme Court (Transfer) Act 1992

No. 49 of 1992

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AMENDMENTS OF THE AUSTRALIAN CAPITAL TERRITORY
SUPREME COURT ACT 1933

SCHEDULE 2

OTHER CONSEQUENTIAL AMENDMENTS



A.C.T. Supreme Court (Transfer) Act 1992

No. 49 of 1992

**An Act relating to the transfer of responsibility for the
Supreme Court of the Australian Capital Territory from
the Commonwealth to the Territory, and for other
purposes**

[Assented to 17 June 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *A.C.T. Supreme Court (Transfer) Act 1992*.

Commencement

2. This Act commences on 1 July 1992.

PART 2—AMENDMENTS OF THE AUSTRALIAN CAPITAL TERRITORY (SELF-GOVERNMENT) ACT 1988

Principal Act

3. In this Part, “Principal Act” means the *Australian Capital Territory (Self-Government) Act 1988*¹. 5

Definitions

4. Section 3 of the Principal Act is amended by inserting the following definitions:

“ ‘Attorney-General of the Territory’ means the Minister who has the responsibility for the administration of justice in the Territory; 10

‘Chief Magistrate’ means the Chief Magistrate appointed under the *Magistrates Court Act 1930* of the Territory;

‘judicial commission’ means a body or authority established by the Assembly having the function (whether alone or together with another body or authority of the Territory) of investigating, and reporting to the Attorney-General of the Territory on, complaints concerning the conduct or the physical or mental capacity of a judicial officer; 15

‘judicial officer’ means:

- (a) the Chief Justice of the Supreme Court; or
- (b) a Judge (other than an additional Judge) of the Supreme Court; 20
or
- (c) the Master of the Supreme Court; or
- (d) the Chief Magistrate; or
- (e) a Magistrate; or
- (f) any other judicial office holder or member of a tribunal specified 25
in an enactment relating to the establishment of a judicial commission for the Territory;

‘Magistrate’ means a Magistrate (other than a Special Magistrate) appointed under the *Magistrates Court Act 1930* of the Territory;

‘Supreme Court’ means the Supreme Court of the Territory existing 30
under the *Supreme Court Act 1933* of the Territory;”.

Power of Assembly to make laws

5. Section 22 of the Principal Act is amended by inserting in subsection (1) “and Part VA” after “this Part”.

Matters excluded from power to make laws 35

6. Section 23 of the Principal Act is amended:

- (a) by omitting paragraphs (1)(b) and (1)(f);
- (b) by omitting subsections (3) and (4).

Certain laws converted into enactments

7. Section 34 of the Principal Act is amended by omitting from subsection (3) all the words from and including “after” and substituting “1 July 1992”.

5 8. After Part V of the Principal Act the following Part is inserted:

“PART VA—THE JUDICIARY

Jurisdiction and powers of the Supreme Court

10 “48A.(1) The Supreme Court is to have all original and appellate jurisdiction that is necessary for the administration of justice in the Territory.

 “(2) In addition, the Supreme Court may have such further jurisdiction as is conferred on it by any Act, enactment or Ordinance, or any law made under any Act, enactment or Ordinance.

15 “(3) The Supreme Court is not bound to exercise any powers where it has concurrent jurisdiction with another court or tribunal.

Retirement age of Judges etc. of the Supreme Court

 “48B.(1) This section applies to the following offices:

- 20 (a) Chief Justice of the Supreme Court;
 (b) Judge (other than additional Judge) of the Supreme Court;
 (c) Master of the Supreme Court.

25 “(2) An enactment that changes the retirement age in relation to an office to which this section applies does not affect the term of office of a person who was appointed to such an office before the commencement of that enactment unless the person has consented in writing to the application of the enactment to him or her.

Judicial commission

 “48C.(1) An enactment relating to the establishment of a judicial commission for the Territory must provide that:

- 30 (a) the commission is to be constituted by persons who:
 (i) have been Justices of the High Court or are, or have been, Judges of a superior court of record of the Commonwealth or of a State or Territory (other than persons who are Judges of the Supreme Court of the Territory appointed under subsection 7(1) of the *Supreme Court Act 1933* of the Territory); and
35 (ii) are appointed by the Executive for such terms as are determined in accordance with the enactment; and
40 (b) the commission is to have the function (whether alone or together with another body or authority of the Territory) of investigating, and reporting to the Attorney-General of the

Territory on, complaints concerning the conduct or the physical or mental capacity of a judicial officer.

“(2) A judicial commission may have functions in addition to the function mentioned in paragraph (1)(b).

Removal of a judicial officer from office 5

“48D. An enactment relating to the removal from office of a judicial officer must provide that:

(a) a judicial officer may only be removed from office if:

(i) a judicial commission appointed by the Executive to examine a complaint concerning the judicial officer has submitted to the Attorney-General of the Territory a report that: 10

(A) sets out the facts found by the commission in relation to the subject matter of the complaint; and 15

(B) states that, in the commission’s opinion, the facts so found could amount to misbehaviour or physical or mental incapacity (as the case may be) warranting the officer’s removal from office; and

(ii) the Assembly: 20

(A) has determined that the facts so found amount to misbehaviour or physical or mental incapacity identified by the commission; and

(B) has passed a motion requiring the Executive to remove the officer from office on the ground of that misbehaviour or incapacity; and 25

(b) a judicial officer may only be removed from office by the Executive in writing.”.

Remuneration and allowances

9. Section 73 of the Principal Act is amended: 30

(a) by inserting after paragraph (1)(f) the following paragraphs:

“(fa) Chief Justice of the Supreme Court;

(fb) Judge of the Supreme Court;

(fc) Master of the Supreme Court;

(fd) Chief Magistrate; 35

(fe) Magistrate;”;

(b) by omitting from subsection (2) “A person” and substituting “Subject to subsection (3A) and subsection 29A(2) of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*, a person”;

(c) by inserting after subsection (3) the following subsection: 40

“(3A) The remuneration and allowances of a person holding an office specified in paragraph (1)(fa), (fb), (fc), (fd) or (fe) are not to be diminished while the person holds that office.”.

5 **PART 3—AMENDMENTS OF THE A.C.T. SELF-GOVERNMENT
(CONSEQUENTIAL PROVISIONS) ACT 1988**

Principal Act

10 **10.** In this Part, “**Principal Act**” means the *A.C.T. Self-Government (Consequential Provisions) Act 1988*².

Title

10 **11.** The title of the Principal Act is amended by inserting “**and certain amendments made to that Act**” after “**1988**”.

12. After section 29 of the Principal Act the following sections are inserted:

Judicial officers of the Supreme Court of the A.C.T.—savings

15 “29A.(1) If a person held office as:

- (a) Chief Justice; or
- (b) Judge; or
- (c) additional Judge; or
- (d) Master;

20 of the Supreme Court of the Australian Capital Territory immediately before 1 July 1992, the person continues to hold that office on and after that day as if he or she had been appointed under the *Supreme Court Act 1933* of the Territory.

“**(2)** If a person:

25 (a) held office as Chief Justice or as a Judge (other than an additional Judge) of the Supreme Court immediately before 1 July 1992; and

(b) continues to hold office on and after that day;

30 the person is to hold that office on terms and conditions (being terms and conditions determined under section 73 of the Self-Government Act or under any enactment) that are not less favourable than those applicable to a Judge of the Federal Court of Australia.

35 “**(3)** For the purpose of determining the seniority or precedence of a Judge to whom subsection (2) applies under any enactment, the date on which that Judge’s commission took effect is to be taken to be the date on which that Judge’s commission took effect under the *Australian Capital Territory Supreme Court Act 1933* as in force before 1 July 1992.

Proceedings in the Supreme Court etc.—savings

“29B. The enactment of the *A.C.T. Supreme Court (Transfer) Act 1992* does not affect:

- (a) the continuance on or after 1 July 1992 of proceedings pending in the Supreme Court of the Australian Capital Territory immediately before that day; or
- (b) the operation or enforcement of a judgment or order entered or made before that day.”

PART 4—OTHER AMENDMENTS ETC.

Amendments of the *Australian Capital Territory Supreme Court Act 1933* 10

13. The *Australian Capital Territory Supreme Court Act 1933* is amended as set out in Schedule 1.

Renumbering of the *Australian Capital Territory Supreme Court Act 1933* 15

14.(1) In this section:

“**amended Act**” means the *Australian Capital Territory Supreme Court Act 1933* as amended by section 13.

(2) The amended Act is further amended as provided by this section.

(3) The sections of the amended Act are renumbered in a single series so that they bear consecutive Arabic numerals. 20

(4) Any provision of the amended Act that refers to a section of that Act that has been renumbered under this section is amended by omitting that reference and substituting a reference to the section as so renumbered. 25

(5) A reference in a provision of a law of the Commonwealth or of a Territory enacted before the commencement of this section (whether or not that provision has come into operation), or in any instrument or document, to a section of the amended Act that has been renumbered under this section is to be construed as a reference to that section as so renumbered. 30

Other consequential amendments

15. The Acts specified in Schedule 2 are amended as set out in that Schedule.

Cessation of certain modifications of Act 35

16. The modifications of the *Australian Capital Territory Supreme Court Act 1933* specified in Schedule 1 of the *A.C.T. Self-Government (Consequential Provisions) Regulations* cease to have effect.

Repeal of Ordinance

17. The *Sheriff Ordinance 1934* of the Territory is repealed. 40

SCHEDULE 1

Section 13

**AMENDMENTS OF THE AUSTRALIAN CAPITAL TERRITORY
SUPREME COURT ACT 1933**

Section 1:

Omit “*Australian Capital Territory*”.

Section 3:

Repeal the section.

Section 5:

Insert:

“ ‘**President**’ means the President of the Australian Capital Territory Administrative Appeals Tribunal appointed under the *Administrative Appeals Tribunal Act 1989* of the Territory;”.

Subsection 7(1):

Omit “Governor-General”, substitute “Executive”.

Subsection 7(1A):

Omit “Parliament or of a court of a State”, substitute “Commonwealth Parliament or of a court of a State or Territory”.

Subsection 7(1B):

Omit the subsection.

Subsection 7(2):

- (a) Omit “Governor-General”, substitute “Executive”.
- (b) Omit “Parliament”, substitute “Commonwealth Parliament, or a superior court of record of a State or Territory,”.

Subsection 7(3):

Omit the subsection.

Subsection 7(5):

Omit “Parliament”, substitute “Commonwealth Parliament or a superior court of record of a State or Territory”.

Subsection 7(6):

- (a) Omit “Governor-General”, substitute “Executive”.
- (b) Omit “both Houses of the Parliament in the same session”, substitute “the Assembly”.

Subsection 7(7):

Omit “Governor-General”, substitute “Attorney-General”.

SCHEDULE 1—continued

Section 7AA:

Repeal the section, substitute:

Seniority of Judges

“7AA.(1) The Chief Justice is the senior Judge of the Court.

“(2) The other Judges (including the additional Judges) have seniority as between themselves:

- (a) according to the dates on which their commissions took effect; or
- (b) if the commissions of 2 or more of them took effect on the same date, according to the precedence assigned to them by their commissions.”.

Subsection 8(1):

After “8AA” insert “, 8AABA”.

After section 8AA:

Insert:

Exercise of jurisdiction under subsections 46(4) and 48(2) of the *Administrative Appeals Tribunal Act 1989* of the Territory

“8AABA.(1) The jurisdiction conferred by subsection 46(4) of the *Administrative Appeals Tribunal Act 1989* of the Territory:

- (a) may be exercised by the Court constituted by not less than 3 Judges; and
- (b) must be so exercised if:
 - (i) the Tribunal’s decision was given by the Tribunal constituted by a member who was, or by members at least one of whom was, a presidential member other than a Judge; and
 - (ii) after consulting the President, the Chief Justice considers that it is appropriate for the appeal from the decision to be heard and determined by the Court constituted by not less than 3 Judges; and
- (c) must be so exercised if the Tribunal’s decision was given by the Tribunal constituted by a member who was, or by members at least one of whom was, a Judge.

“(2) The jurisdiction conferred by subsection 48(2) of the *Administrative Appeals Tribunal Act 1989* of the Territory must be exercised by the Court constituted by not less than 3 Judges if, after consulting the President, the Chief Justice considers that it is appropriate for the question to be heard and determined by the Court so constituted.”.

SCHEDULE 1—continued

Section 8AC:

After “8AA” insert “, 8AABA”.

Section 8A:

- (a) Omit “A person”, substitute “Subject to subsections (2) and (3), a person”.
- (b) Before “Parliament” insert “Commonwealth”.
- (c) After “judicial office in a” insert “State or”.
- (d) Add at the end:

“(2) A Judge of the Court may, with the written approval of the Executive, hold another judicial office that is created by or under a law of the Commonwealth, a State or another Territory.

“(3) The Executive must consult with the Chief Justice before giving the approval.

“(4) Subsection (2) does not apply in relation to an additional Judge of the Court.”.

Subsection 8B(1):

Omit the subsection, substitute:

“(1) The Chief Justice and the other Judges appointed under subsection 7(1) are to receive salary and allowances under section 73 of the *Australian Capital Territory (Self-Government) Act 1988*.”.

Subsection 8B(2):

Omit “under this section”.

Subsection 9(1):

Omit “specified by the Governor-General by notice in the *Gazette*”, substitute “determined by the Chief Justice”.

Section 10:

Omit “the Governor-General,”.

Section 11:

Repeal the section, substitute:

Jurisdiction and powers of the Supreme Court

“11.(1) The Supreme Court has the following jurisdiction:

- (a) all original and appellate jurisdiction that is necessary to administer justice in the Territory;
- (b) jurisdiction conferred by a Commonwealth Act or a law of the Territory.

SCHEDULE 1—continued

“(2) Unless it is required to do so by or under a Commonwealth Act or a law of the Territory, the Supreme Court is not bound to exercise its powers where it has concurrent jurisdiction with another court or tribunal.”.

Subsection 28(1):

Omit “or with any Ordinance”, substitute “, with any Ordinance or with any enactment”.

Subsection 28(3):

Omit the subsection.

Subsection 32(1):

Omit “Governor-General”, substitute “Executive”.

Section 33B:

Repeal the section.

Section 33C:

Omit “Governor-General”, substitute “Attorney-General”.

Section 33E:

Repeal the section.

Subsection 33F(1):

Omit “Governor-General”, substitute “Executive”.

Subsection 33F(4):

Omit “the Commonwealth and”.

Subsection 33F(5):

Omit “Minister”, substitute “Executive”.

After section 35:

Insert:

Oath or affirmation of office

“35AA. The Registrar must, before proceeding to discharge the duties of the office, take, before a Judge of the Court, an oath or affirmation in the following form:

‘I, _____, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Registrar of the Supreme Court of the Australian Capital Territory, so help me God.’

SCHEDULE 1—continued

or

‘I, _____, do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Registrar of the Supreme Court of the Australian Capital Territory.’”.

After section 37A:

Insert:

Appointment of officers to assist the Sheriff

“37B.(1) The Attorney-General may appoint persons to assist the Sheriff in the execution of the Sheriff’s duties.

“(2) An act done by a person so appointed:

- (a) is taken to be done by and under the authority of the Sheriff; and
- (b) is as valid and effectual as if done by the Sheriff.

“(3) A person so appointed:

- (a) may exercise any powers or functions invested in the Sheriff; and
- (b) has the rights, privileges, immunities and liabilities of the Sheriff.

“(4) If a person so appointed is not a public servant, the person is to receive such remuneration as the Attorney-General determines or, if no such determination is in force, as is prescribed.”.

Section 50:

Omit “any Ordinance or to Rules of Court” (wherever occurring), substitute “any enactment, Ordinance or Rules of Court”.

Subsection 53(3A):

Omit the subsection.

Subsection 53(7):

Omit the subsection.

Section 55:

- (a) Omit “the like”.
- (b) Omit “as may be lawfully exercised by a Judge of the Supreme Court of New South Wales in cases cognizable before him”.

SCHEDULE 2

OTHER CONSEQUENTIAL AMENDMENTS

Federal Court of Australia Act 1976

Subsection 6(7):

Omit the subsection, substitute:

“(7) In this section:

‘prescribed court’ means:

- (a) a court (other than the Court) created by the Parliament; or
- (b) the Supreme Court of the Northern Territory; or
- (c) the Supreme Court of the Australian Capital Territory.”.

Judges (Long Leave Payments) Act 1979

Section 3 (paragraph (a) of the definition of “Judge”):

Omit “or of the Supreme Court of the Australian Capital Territory”.

Section 3 (definition of “Judge”):

Add at the end:

“or (c) a person who was a Judge of the Supreme Court of the Australian Capital Territory immediately before the commencement of the *A.C.T. Supreme Court (Transfer) Act 1992*.”.

Judges’ Pensions Act 1968

Subsection 4(1) (paragraph (a) of the definition of “Judge”):

Omit “or of the Supreme Court of the Australian Capital Territory”.

Subsection 4(1) (after paragraph (b) of the definition of “Judge”):

Insert:

“(ba) a person who was a Judge of the Supreme Court of the Australian Capital Territory immediately before the commencement of the *A.C.T. Supreme Court (Transfer) Act 1992*; or”.

NOTES

1. No. 106, 1988, as amended. For previous amendments, see No. 60, 1989; No. 33, 1991; and No. 10, 1992.
See also Statutory Rules 1989, No. 86.
2. No. 109, 1988, as amended. For previous amendment, see No. 60, 1989.

A.C.T. Supreme Court (Transfer) No. 49, 1992

*[Minister's second reading speech made in—
House of Representatives on 6 May 1992
Senate on 1 June 1992]*