



SUPREME COURT ACT 1960

[Consolidated as at 20 January 2013
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Supreme Court Act 1960

An Act to provide for the jurisdiction, practice and procedure of the Supreme Court of Norfolk Island, and for purposes connected therewith.

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Supreme Court Act 1960*.

Parts

2. This Act is divided into Parts, as follows:

Part 1 — Preliminary

Part 2 — Jurisdiction of the Supreme Court

Part 3 — Administration and Officers

Part 4 — Practice and Procedure

Part 5 — Appeals

Part 6 — Miscellaneous

Repeal and saving

3. (1) The Acts specified in the First Schedule are repealed.

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Definitions

4. In this Act, unless the contrary intention appears —
“cause” includes any suit and any criminal proceeding;
“Chief Justice” means the judge so appointed in accordance with the *Norfolk Island Act 1979* (Commonwealth) subsection 53(1A);
“defendant” includes any person against whom any relief is sought in a matter or who is required to attend the proceedings in a matter as a party to the proceedings;
“Judge” means a judge of the Supreme Court and includes an acting Judge;
“judgment” includes any decree, order, rule, conviction or sentence;
“matter” includes any proceeding in the Supreme Court, whether between parties or not, and any incidental proceeding in a cause or matter;
“plaintiff” includes any person seeking relief against any other person by any form of proceedings in a court;
“suit” includes any action or original proceeding of a civil nature between parties;
“the Court” means the Supreme Court;

“the Registrar” means the Registrar of the Supreme Court appointed under section 12 and, in relation to a matter in respect of which a Deputy Registrar of the Supreme Court appointed under that section is empowered to exercise the powers and perform the functions of the Registrar, includes a Deputy Registrar of the Supreme Court.

PART 2 — JURISDICTION OF THE SUPREME COURT

Jurisdiction of Supreme Court

5. (1) Subject to this Act, the Supreme Court has the same jurisdiction in and in relation to the Territory as the Supreme Court of the Australian Capital Territory has in and in relation to the Australian Capital Territory.

(2) Without limiting the generality of subsection (1), the jurisdiction of the Supreme Court includes jurisdiction —

- (a)** to hear and determine all causes and matters arising under any law;
- (b)** to deal with and impose punishments in respect of contempt of the Court;
- (c)** to grant probates of wills, and letters of administration of the estates, of persons dying seised or possessed of real or personal property in the Territory;
- (d)** to impose punishments and penalties as provided by any law;
- (e)** on sufficient grounds, to order a new trial; and
- (f)** with such exceptions and subject to such conditions as are provided by any law, to hear and determine appeals from the judgments of inferior courts and tribunals for the Territory.

(3) The jurisdiction of the Supreme Court includes jurisdiction conferred on it by a law other than this Act.

(4) In subsections (2) and (3), “law” means law in force in the Territory.

(5) Where, in a law of the State of New South Wales in its application to the Territory, a power or function is expressed to be vested in the Supreme Court of New South Wales, or a Judge of that Court, that power or function shall, in relation to the Territory, be vested in the Supreme Court or a Judge, as the case may be.

(6) A Judge has authority to hold persons to security of the peace and for good behaviour in matters cognisable before him.

Costs

6. (1) The Supreme Court and a Judge sitting in chambers have jurisdiction to award costs in all matters brought before the Court, including matters dismissed for want of jurisdiction.

(2) Subject to rules of court, the costs of and incidental to proceedings in the Supreme Court, including the administration of estates and trusts, are in the discretion of the Court or Judge, and the Court or Judge has power to determine by whom and to what extent the costs are to be paid.

(2A) Until the Chief Justice has made rules under section 19 for determining the costs that may be payable by a party, the rules in respect of costs in the Supreme Court and the scale of costs shall be in accordance with the Supreme Court rules made under the *Supreme Court Act 1933* of the Australian Capital Territory from time to time or such rules as may replace them under the *Court Procedures Act 2004* (A.C.T.) and if required to be taxed shall be taxed as the court may direct.

(3) Nothing in this section affects the practice that would, but for this section, be followed in a criminal proceeding or matter.

Exercise of jurisdiction of Supreme Court

7. (1) The jurisdiction of the Supreme Court may be exercised —
- (a) by a Judge sitting in court; or
 - (b) to the extent provided by this or any other Act, or by rules of court, and in all matters of practice and procedure - by a Judge sitting in chambers.

(2) A Judge may order a matter that is brought before him in chambers to be adjourned into court and heard in open court.

Mandamus, injunctions and receivers

8. (1) The Supreme Court may grant a mandamus or an injunction, or appoint a receiver, by any interlocutory order in all cases in which it appears to the Court to be just or convenient to do so.

(2) An order referred to in subsection (1), may be made either unconditionally or on such terms and conditions as the Court thinks just.

(3) If, whether before, at or after the hearing of a cause or matter, an application is made for an injunction to prevent a threatened or apprehended waste or trespass, the injunction may be granted, if the Court thinks fit, whether the person against whom the injunction is sought is, or is not, in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

PART 3 — ADMINISTRATION AND OFFICERS

Division 1 — Administration

Sittings

9. (1) Subject to any Regulations made under the *Norfolk Island Act 1979*, the sittings of the Supreme Court shall be held at such places in Norfolk Island as the Chief Justice thinks fit.

(2) The times of the sittings of the Supreme Court shall be determined by the Chief Justice.

(3) The Supreme Court may, at any stage of a proceeding, order that the proceeding be continued at a place, being a place at which the Court is empowered to sit, and time specified in the order, and may from time to time vary any such order.

Registry

10. The Commonwealth Minister shall establish a registry of the Supreme Court.

Seals

11. (1) The Supreme Court shall have a Seal of the Court for sealing writs and other instruments or documents issued out of the Court and required to be sealed.

(2) The Seal shall be of such design, and shall contain such inscription, as is approved by the Commonwealth Minister.

(3) Until the Seal referred to in subsection (1) is provided, writs and other instruments or documents issued out of the Court and required to be sealed shall be sealed in such manner as the Chief Justice directs.

(4) The Seal referred to in subsection (1) shall be kept at such place and in such custody as the Chief Justice directs.

(5) The Court shall also, for the purposes of authentication, have a seal or stamp, of a kind approved by the Commonwealth Minister, with which instruments and documents requiring authentication may be sealed or stamped.

(6) The seal or stamp referred to in subsection (5) shall be kept at such place and in such custody as the Chief Justice directs.

(7) All Courts and persons acting judicially shall take judicial notice of the Seal of the Court referred to in subsection (1) or the seal or stamp referred to in subsection (5) affixed on a document or a copy of a document and, in the absence of proof to the contrary, shall presume that it was affixed by proper authority.

Division 2 — Officers

Registrar and Deputy Registrar

12. There shall be a Registrar of the Supreme Court and one or more Deputy Registrars of the Supreme Court, who shall be appointed by the Administrator and shall hold office for such period, and on such terms and conditions, as the Administrator determines.

Deputy Registrar appointed from Federal Court

12A. A Deputy Registrar appointed in accordance with section 12 must, if not resident on Norfolk Island, be a Registrar, Deputy Registrar, District Registrar or Deputy District Registrar of the Federal Court.

Powers and functions of Registrar

13. (1) When, in any law in force in the Territory, any power or function is respectively expressed to be exercisable or performed by the Master in Equity, the Prothonotary or a Registrar, being a Registrar of a court, the power or function may be exercised or performed by the Registrar.

(2) Subject to subsection (1) and the provisions of any other law conferring powers and functions upon him, the Registrar shall have such powers (including the power to administer oaths) and functions as are conferred upon him by this Act and by rules of court.

Powers and functions of Deputy Registrar

14. (1) A Deputy Registrar may exercise and perform all the powers and functions of the Registrar —

- (a) during any absence of the Registrar from duty or from the Territory;
- (b) during any vacancy in the office of Registrar; and
- (c) subject to the direction and control of the Registrar, at any other time;
- (d) where a Deputy Registrar is also a Registrar, Deputy Registrar, District Registrar or Deputy District Registrar of the Federal Court, in respect of such matters as may be necessary or appropriate or as may be directed by a Judge and including the issue and sealing of process or orders of the Court and taxing of costs.

(2) Where the exercise of a power or the performance of a function by the Registrar, or the operation of a provision of this Act or of a provision of any other law in force in the Territory, is dependent upon the opinion, belief or state of mind of the Registrar in relation to a matter, that power or function may, subject to subsection (1), be exercised or performed by the Deputy Registrar, or the provision may operate, as the case may be, upon the opinion, belief or state of mind of the Deputy Registrar in relation to that matter.

Sheriff

15. (1) There shall be a Sheriff of Norfolk Island, who shall be appointed by the Administrator and shall hold office for such period, and on such terms and conditions, as the Administrator determines.

(2) The Sheriff may exercise all the powers and perform all the functions conferred upon a sheriff by any law in force in the Territory and is entitled to all the privileges and immunities conferred, and is subject to all the duties and liabilities imposed, upon a sheriff by any such law.

(3) Without limiting the generality of subsection (2), the Sheriff is charged with the service and execution of all writs, summonses, orders, warrants, precepts, commands and other process of the Supreme Court that are directed to him, and shall —

- (a) make such return of process to the Court, together with the manner of the execution of the process, as he is required to do by the process;
- (b) take, receive and detain all persons who are committed to his custody by the Court; and
- (c) discharge all such persons when directed by the Court to discharge them or when required by law to do so.

(4) During any absence of the Sheriff from duty or from the Territory or during any vacancy in the office of Sheriff, the powers and functions of the Sheriff shall be exercised and performed by such person as the Registrar appoints.

Action by or against Sheriff

16. When the Sheriff is a party to a cause in the Supreme Court, all writs, summonses, orders, warrants, precepts, commands and other process in the cause that should in the ordinary course be directed to him shall be directed to such disinterested person as the Registrar appoints, and the person so appointed shall execute and return the process in such manner as the Sheriff would have been required to do if the process had been directed to him.

Oath or affirmation

17. (1) A person appointed to an office under this Division shall, before proceeding to discharge the duties of his office, take before the Administrator an oath or affirmation in the form in the Second Schedule.

(2) When a person has once taken an oath or affirmation under subsection (1), on his appointment to an office under this Division and afterwards ceases to hold that office, it is not necessary for him again to take the oath or affirmation on his again being appointed to that office.

(3) A person appointed as Deputy Registrar who holds office as Registrar, Deputy Registrar, District Registrar or Deputy District Registrar of the Federal Court is not required to take the oath or affirmation.

PART 4 — PRACTICE AND PROCEDURE**Practice and procedure**

18. Subject to this Act, the practice and procedure of the Supreme Court shall be governed by rules of court.

Rules of court

19. (1) The Chief Justice may make rules of court, not inconsistent with this Act, regulating the practice and procedure of the Court, and prescribing all matters and things necessary or convenient to be prescribed for carrying out or giving effect to this Act or for the conduct of the business of the Court.

(2) Notice of the making of a rule of court made under subsection (1), shall be published in the Gazette.

(3) A rule of court is a disallowable instrument.

(4) Until, in relation to a matter or class of matters, rules of court are made by the Chief Justice, under subsection (1), the rules of court for the time being in force of the Supreme Court of the Australian Capital Territory in relation to that matter or class of matters shall, so far as applicable and mutatis mutandis, be the rules of court of the Supreme Court.

(5) Where provision in respect of a question of practice or procedure is not made by this Act, by rules of court or by any other law in force in the Territory, the practice of the Federal Court of Australia in its original jurisdiction applies.

(6) In this section, “practice and procedure” includes matters relating to —

- (a) the attendance of witnesses;
- (b) the custody or bail of accused or convicted persons; and
- (c) the enforcement and execution of judgments.

Sealing and dating of writs

20. All writs, commissions and process issued from the Supreme Court shall be —

- (a) in the name of the Queen;
- (b) under the Seal of the Court or such other seal as, in pursuance of subsection 11(5), is directed by the Chief Justice;
- (c) signed by the Registrar or other proper officer; and
- (d) dated as of the day on which they are issued.

Service out of jurisdiction

21. Writs of summons issued out of the Supreme Court and notices of such writs may be served out of the jurisdiction of the Court in the manner and to the extent provided by rules of court.

Mode of trial in suits

22. (1) In every suit in the Supreme Court, unless the Court or a Judge otherwise orders, the trial shall be by the Court without a jury.

(2) The Supreme Court or a Judge may, if it appears just, order specially that any suit or any issue of facts in any suit shall be tried before the Court with a jury.

Indictable offences

23. (1) Subject to any law of the Commonwealth in force in the Territory and to subsection (2), an indictable offence triable before the Supreme Court shall be prosecuted by information in the name of the person appointed for the purpose of this section by the Minister in accordance with a resolution of the Legislative Assembly.

(2) The person referred to in subsection (1) may file an information under subsection (1) without examination or commitment for trial of the accused person.

(3) Upon an information being filed without examination or commitment for trial, the Supreme Court or a Judge may —

- (a) cause a summons to be issued to the accused person to appear at the time and place specified in the summons and then and there to answer the charge specified in the information; or
- (b) issue a warrant for the arrest of the accused person and hold him in custody or admit him to bail.

(4) Where a person has been committed for trial upon a charge of an indictable offence triable before the Supreme Court, the information against the person may include, either in substitution for, or in addition to, a count charging the offence for which he was committed, a count founded on a fact or on evidence disclosed in the course of the committal proceedings.

(5) Subsection (4) does not authorise the inclusion of more than one count in the same information unless those counts are such as may lawfully be joined in the one information.

(6) Where a person has been committed for trial upon a charge of an indictable offence triable before the Supreme Court, the person referred to in subsection (1) may decline to proceed further in the prosecution and, if the accused person is in custody, may, by warrant under his hand, direct the discharge of the accused person from custody, and the accused person shall be discharged accordingly.

Oral evidence

24. Except as otherwise provided in this or any other Act, or unless in any suit the parties agree to the contrary, testimony at the trial of causes shall be given orally in open court.

Evidence by affidavit

25. (1) On the hearing of any matter, not being the trial of a cause, evidence may be given by affidavit or orally as the Supreme Court or a Judge directs.

(2) At the trial of a cause, proof may be given by affidavit of the service of any document incidental to the proceedings in the cause, or of the signature of a party to the cause or his solicitor to such a document.

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

(4) An order shall not be made under subsection (3) if a party to the cause requests in good faith that the proposed witness shall attend at the trial for cross examination.

Order and commissions for examination of witnesses

26. The Supreme Court or a Judge may, in any suit or civil matter pending in the Court, and at any stage of the proceedings —

- (a) order the examination of any person upon oath, orally or on interrogatories, before the Court or Judge or before any officer of the Court or other person;
- (b) order a commission or letters of request to be issued to take evidence;
- (c) by the same or any subsequent order, give any necessary directions touching the time, place and manner of such an examination; and
- (d) empower any party to the suit or civil matter to give in evidence in the suit or matter the testimony so taken on such terms (if any) as the Court or Judge directs.

Non-appearance or absence of some defendants

27. (1) Where there are several defendants in a cause pending in the Supreme Court, if any defendant is not served with process and does not voluntarily appear, the Court may nevertheless entertain the cause and proceed to hear and determine it between the parties who are properly before the Court, but the judgment given in the cause shall not include or prejudice other parties who are not regularly served with process and do not voluntarily submit to the jurisdiction of the Court.

(2) When, in any suit of which the Supreme Court has jurisdiction, any defendant is not a resident of, or found within, the Territory or the Commonwealth, and does not voluntarily appear in the suit, the Court may nevertheless proceed to exercise its jurisdiction after such notice to the defendant, and upon such terms, as are prescribed by rules of Court.

Amendment of defects

28. (1) The Supreme Court or a Judge may at any time, and on such terms as it or he thinks just, amend any defect or error in any proceedings in the Court.

(2) An amendment referred to in subsection (1) shall be made for the purpose of determining the real questions in controversy or otherwise depending on the proceedings.

Proceedings not invalidated by formal defects

29. (1) Proceedings in the Supreme Court shall not be invalidated by any formal defect or by any irregularity, unless the Court is of the 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.

(2) The Court or a Judge may make an order declaring that any proceeding is valid notwithstanding any defect or irregularity.

Fines and penalties

30. (1) Subject to any other law in force in the Territory, all fines and penalties imposed by the Court shall be paid to the Registrar.

(2) The Court may, in the order imposing a fine or penalty, direct that, in default of payment or satisfaction at the time and in the manner ordered, the fine or penalty may be recovered by distress, levy and sale of the goods and chattels of the defendant, and, in default of sufficient distress, the defendant be imprisoned for a term not exceeding three months.

New trial

- 31.** In any action in which a new trial is granted, the Court may —
- (a) impose such conditions on, and direct such admissions to be made by, either party for the purpose of the new trial as the Court thinks fit;
 - (b) grant such new trial either generally, or on some particular point or points only, as the Court thinks fit;
 - (c) order that the testimony of any witness examined at the former trial may be read from the Judge's notes or the transcript of evidence, instead of the witness being again examined in open Court; and
 - (d) for the purposes of paragraphs (a), (b) and (c), from time to time, make such orders as are necessary.

PART 5 — APPEALS**Appeals in civil cases**

32. (1) The Federal Court of Australia has jurisdiction to hear and determine appeals from every judgment (whether final or interlocutory) of the Supreme Court in a civil matter that —

- (a) is given or pronounced for, or in respect of, any sum or matter at issue amounting to or of the value of \$3000;
- (b) involves directly or indirectly any claim, demand or question to or respecting any property or any civil right amounting to, or of the value of, \$3000;
- (c) affects the status of any person under a law relating to aliens, marriage, divorce, bankruptcy or insolvency; or
- (d) is one with respect to which the Federal Court of Australia thinks fit to give leave or special leave to appeal.

(2) An appeal may not be brought from an interlocutory judgment or order, or from a decision of the Supreme Court or a Judge with respect to costs that are in its or his discretion, except by leave of the Federal Court of Australia.

(3) An appeal does not lie from a judgment given by consent.

(4) When an order granting leave to appeal is made by the High Court, the Registrar of the Supreme Court shall forward certified copies of the proceedings and evidence in the case to the Principal Registrar of the High Court.

Appeals in criminal cases

33. A person convicted on indictment before the Supreme Court may appeal to the Full Court of the Federal Court of Australia —

- (a) against his conviction on any ground of appeal that involves a question of law alone;
- (b) with the leave of the Supreme Court or a Judge, on any ground of appeal that involves a question of fact alone or a question of mixed law and fact;

- (c) with the leave of the Federal Court of Australia any ground of appeal mentioned in the last preceding paragraph, or on any other ground that appears to the Federal Court to be a sufficient ground of appeal; and
- (d) with the leave of the Full Court of the Federal Court of Australia, against the sentence passed on his conviction, unless the sentence is one fixed by law,

and the Full Court of the Federal Court of Australia has jurisdiction to hear and determine the appeal.

Appeal may be by case stated

34. An appeal under section 32 or 33, may be by case stated, with the legal argument (if any) attached to the case in writing, and it shall not be necessary in any such case for the parties to the appeal to appear at the hearing of the appeal either personally or by counsel.

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PART 6 — MISCELLANEOUS

Commissioners for affidavits

36. The Chief Justice may, by commission under the Seal of the Court, authorise as many persons as he thinks necessary to take and receive affidavits concerning a matter within the jurisdiction of the Court.

Duty of receiver or manager

37. When, in any cause pending in the Supreme Court, a receiver or manager appointed by the Court is in possession of any property, the receiver or manager shall manage and deal with the property according to the requirements of the laws of the State or part of the Commonwealth in which the property is situated, in the same manner as the owner or possessor of the property would be bound to do if in possession of the property.

Liability and protection of receiver or manager

38. A receiver or manager of any property appointed by the Supreme Court may, without the previous leave of the Court, be sued in respect of any act or transaction performed or carried out by him in carrying on the business connected with the property.

Interest on judgments

39. A judgment debt carries interest at the rate of \$10 per centum per annum from the date on which the judgment is entered.

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FIRST SCHEDULE

Section 3

Judiciary Act 1936

Judiciary Act 1954

Judiciary Act 1957

Judiciary Act 1958

SECOND SCHEDULE

Section 17

OATH

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, that I will well and truly serve Her in the office of _____ 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!

AFFIRMATION

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, that I will well and truly serve Her in the office of _____ and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

NOTES

The *Supreme Court Act 1960* as shown in this consolidation comprises Act. No. 5 of 1960 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commence ment	Application saving or transitional provision
<i>Supreme Court Act 1960</i>	5, 1960	14.4.60	3
<i>Ordinances Revision Act 1979</i>	13, 1979	7.8.79	5
<i>Ordinances Revision (Decimal Currency) Act 1980</i>	31, 1980	15.1.81	
<i>Indictable Offences Procedures Act 1994</i>	21, 1994	29.9.94	
		<i>[Previously consolidated as at 24 May 2005]</i>	
<i>Supreme Court (Amendment) Act 2008</i>	8, 2008	7.3.2008	
		<i>[Previously consolidated as at 8 March 2008 Re-issued 25 October 2011 to amend a typographical error in section 33; and to amend end notes]</i>	
<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout — Commonwealth Minister for Minister; and to substitute Minister for executive member]</i>	14, 2012	28.12.12	

Table of Amendments

ad = added or am = amended rep = repealed rs = repealed and substituted
inserted

Provisions affected	How affected
3	am 8, 2008
4	am 13, 1979; 8, 2008
5	am 8, 2008
6	am 8, 2008
7	am 8, 2008
9	am 13, 1979; 8, 2008
11	am 8, 2008
12	am 13, 1979; 8, 2008
12A	ad 8, 2008
14	am 8, 2008
15	am 13, 1979
17	am 8, 2008
19	am 8, 2008
20	am 8, 2008
22	am 8, 2008
23	am 13, 1979; 21, 1994; 8, 2008
25	am 8, 2008
26	am 8, 2008
28	am 8, 2008
29	am 8, 2008
32	am 31, 1980; 8, 2008
33	am 8, 2008
35	rep 8, 2008
36	am 8, 2008
39	am 31, 1980

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