

ADMINISTRATION OF JUSTICE ACT.

New South Wales



ANNO VICESIMO SECUNDO

ELIZABETHÆ II REGINÆ

Act No. 19, 1973.

An Act to change the name of the Divorce Division of the Supreme Court to the "Family Law Division"; to create an Administrative Law Division of the Court; to make further provision with respect to the powers, authorities and privileges of the Chief Judges of the Divisions of the Court and the entry of proceedings in the commercial list; for these and other purposes to amend the Supreme Court Act, 1970, the Evidence Act, 1898, the Administration of Justice Act, 1924, and the Adoption of Children Act, 1965; and for purposes connected therewith. [Assented to, 17th April, 1973.]

BE

No. 19, 1973 **BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title. 1. This Act may be cited as the "Administration of Justice Act, 1973".

**Commence-
ment.** 2. (1) This section and sections 1 and 10 shall commence on the date of assent to this Act.

(2) Sections 3, 4 and 5 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) The several provisions of sections 6 and 7 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette, being a day or days that is or are later than the day appointed and notified under subsection (2).

(4) The several provisions of sections 8 and 9 shall commence on such day or days as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Change of
name of
Divorce
Division.** 3. (1) On the day on which this section commences—

(a) the name of the Divorce Division of the Supreme Court shall become and be the "Family Law Division";

(b) the name of the office of Chief Judge in Divorce shall become and be the "Chief Judge of the Family Law Division"; and

(c)

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- (c) the name of the office of Registrar in Divorce shall become and be the "Registrar of the Family Law Division". No. 19, 1973

(2) The Judge holding office immediately before the commencement of this section as Chief Judge in Divorce shall hold office as Chief Judge of the Family Law Division as if appointed thereto at the time when he was appointed as Judge exercising the matrimonial causes jurisdiction of the Supreme Court or Chief Judge in Divorce, as the case may be.

(3) The person holding office immediately before the commencement of this section as Registrar in Divorce shall be deemed to have been appointed as Registrar of the Family Law Division.

(4) Any proceedings pending in the Divorce Division immediately before the commencement of this section shall, at that commencement, be deemed to be proceedings pending in the Family Law Division.

4. The Supreme Court Act, 1970, is amended—

Amendment
of Act No.
52, 1970.

- (a) by omitting from section 4 the matter "21" wherever occurring and by inserting instead the matter "21A"; Sec. 4.
(Division
of Act.)
- (b) by inserting next after section 21 the following new section :— New sec.
21A.

21A. In any Act (including this Act), rule of court or regulation in force immediately before the commencement of section 4 of the Administration of Justice Act, 1973, a reference to, or a reference to be construed as a reference to— Construc-
tion of
references
to Divorce
Division.

- (a) the Divorce Division shall be construed as a reference to the Family Law Division;

(b)

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(b) the Chief Judge in Divorce shall be construed as a reference to the Chief Judge of the Family Law Division; and

(c) the Registrar in Divorce shall be construed as a reference to the Registrar of the Family Law Division.

Sec. 28.
(Chief
Judges of
Divisions;
Probate
Judge.)

(c) (i) by omitting from section 28 (1), (2), (3) and (4) the words "Chief Judge in Divorce" wherever occurring and by inserting instead the words "Chief Judge of the Family Law Division";

(ii) by omitting section 28 (7);

Sec. 38.
(Divisions
of Court.)

(d) by omitting section 38 (b) (iv) and by inserting instead the following subparagraph :—

(iv) the Family Law Division;

Sec. 41.
(Judges in
the
Divisions.)

(e) by omitting from section 41 (1) (d) the words "Divorce Division by the Chief Judge in Divorce" and by inserting instead the words "Family Law Division by the Chief Judge of that Division";

Sec. 53.
(Assignment
of business.)

(f) (i) by inserting in section 53 (1) after the word "Division" where firstly occurring the words ", other than the Family Law Division,";

(ii) by inserting in section 53 (2) after the word "Division" where firstly occurring the words ", other than the Family Law Division,";

(iii) by inserting next after section 53 (3) the following new subsection :—

(3A) Subject to the rules, there shall be assigned to the Family Law Division all proceedings—

(a) which are required by or under any Act, or by or in accordance with the

rules,

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rules, from time to time in force to be commenced, heard or determined in that Division; or

(b) which would have been commenced in the matrimonial causes jurisdiction of the Court if this Act had not been passed or which would have been commenced in the Divorce Division if the Administration of Justice Act, 1973, had not been passed.

(iv) by omitting from section 53 (4) the words "subsection one or subsection three" and by inserting instead the words "the foregoing provisions".

5. (1) The Adoption of Children Act, 1965, is amended by omitting from the definition of "the nominated officer" in section 6 the words "Registrar in Equity" and by inserting instead the words "Registrar of the Family Law Division of the Court".

Amendment
of Act No
23, 1965.
Sec. 6.
(Interpre-
tation.)

(2) Any act, matter or thing done, omitted or suffered by or in relation to the Registrar in Equity before the commencement of this section in his capacity as the nominated officer (as defined in section 6 of the Adoption of Children Act, 1965, as in force immediately before that commencement) shall be deemed to have been, and shall have the same effect as if, done, omitted or suffered by or in relation to the Registrar of the Family Law Division in his capacity as the nominated officer (as defined in section 6 of that Act as amended by this section).

6.

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No. 19, 1973 **6.** (1) The Supreme Court Act, 1970, is further amended—

Further amendment of Act No. 52, 1970.

Sec. 28.
(Chief Judges of Divisions; Probate Judge.)

(a) (i) by inserting in section 28 (1) after the words “any Judge” the words “, nominated in that behalf by the Chief Justice,”;

(ii) by omitting section 28 (8);

New sec. 28A.

(b) by inserting next after section 28 the following new section :—

Special provisions as to Chief Judges who are not Judges of Appeal.

28A. (1) This section applies to the Chief Judges, but does not apply to a Chief Judge who is a Judge of Appeal by virtue of having been appointed as such.

(2) A Chief Judge to whom this section applies—

(a) shall, while he holds that office, be deemed by virtue of this section to be an additional Judge of Appeal; and

(b) shall, while acting as an additional Judge of Appeal, have all the powers, authorities, privileges and immunities of a Judge of Appeal,

and the provisions of section 36 (4) and (5) apply to and in respect of that Chief Judge in his capacity as an additional Judge of Appeal under this section in the same way as they apply to and in respect of a Judge in his capacity as an additional Judge of Appeal appointed or nominated under section 36.

(3) The Chief Judges to whom this section applies shall have seniority, rank and precedence over all the Judges (including any Judge who is for the time being an additional Judge of Appeal

otherwise

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otherwise than by virtue of this section) except the Chief Justice, the President of the Court of Appeal and the Judges of Appeal and over all persons who, in accordance with the provisions of any Act, have the same rank, title, status and precedence as a Judge of the Supreme Court. No. 19, 1973

(4) The Chief Judges to whom this section applies shall have seniority, rank and precedence between themselves according to the dates of their relevant commissions.

(5) If the relevant commissions of more than one of the Chief Judges to whom this section applies bear the same date they shall have seniority, rank and precedence according to the seniority, rank and precedence assigned to them by their relevant commissions, or failing any such assignment according to the order of their being sworn—

- (a) in the case of a Judge referred to in subsection (7) (a)—as a Judge; or
- (b) in the case of a Judge referred to in subsection (7) (b)—as Chief Judge.

(6) If a Chief Judge to whom this section applies resigns his office as a Chief Judge without resigning his office as a Judge, he shall then have the seniority, rank, status and precedence he would have had if he had not been a Chief Judge.

(7) In this section, a reference to the relevant commission is—

- (a) in relation to a Judge holding office as Chief Judge immediately before the commencement of section 6 of the Administration of Justice Act, 1973—a reference to his commission as a Judge; or

(b)

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- (b) in relation to a Judge the date of whose commission as Chief Judge is later than the date of that commencement—a reference to his commission as Chief Judge.

(2) The Judges holding office immediately before the commencement of this section as Chief Judge at Common Law, Chief Judge in Equity, Chief Judge of the Family Law Division and Probate Judge, respectively, shall continue to hold office as such after that commencement as if subsection (1) (a) had not been enacted.

Further amendment of Act No. 52, 1970.

Sec. 38.
(Divisions of Court.)

7. (1) The Supreme Court Act, 1970, as amended by section 4, is amended—

- (a) (i) by omitting from section 38 (b) (v) the word “and”;
- (ii) by inserting at the end of section 38 (b) (vi) the following word and new subparagraph :—
; and
(vii) the Administrative Law Division.

Sec. 41.
(Judges in the Divisions.)

- (b) by inserting next after section 41 (1) (e) the following new paragraph :—
(f) in the Administrative Law Division by such Judge or Judges as may be nominated by the Chief Justice to act in that Division.

Sec. 53.
(Assignment of business.)

- (c) (i) by inserting in section 53 (1) after the words “Family Law Division” the words “and the Administrative Law Division”;

(ii)

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(ii) by inserting next after section 53 (3A) the No. 19, 1973 following new subsections :—

(3B) Subject to the rules—

- (a) there shall be assigned to the Administrative Law Division all proceedings which are required by or under any Act, or by or in accordance with the rules, from time to time in force to be commenced, heard or determined in that Division; and
- (b) there shall be assigned to the Administrative Law Division all proceedings in the Court—
 - (i) for commanding or otherwise requiring a public body or a public officer to perform a public duty;
 - (ii) for prohibiting or otherwise restraining a public body or a public officer from performing or purporting to perform any act;
 - (iii) for determining by declaration or otherwise any matter concerning the powers of a public body or a public officer; and
 - (iv) in appeals or applications to the Court in respect of decisions of a public body or a public officer under any enactment specified in the rules for the purposes of this subsection.

(3C)

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(3c) In this section—

“prescribed tribunal” means—

- (a) a specified tribunal within the meaning of section 48;
- (b) a court of petty sessions, whether constituted by a stipendiary magistrate or by justices of the peace;
- (c) a stipendiary magistrate, justice of the peace, coroner or deputy coroner; or
- (d) any other tribunal, person or body of persons prescribed, or belonging to a class prescribed for the purposes of this definition;

“public body” means a body of persons, whether corporate or unincorporate, constituted by or under an Act and required to perform or performing public duties, but does not include a prescribed tribunal;

“public officer” means a person holding or acting in a public office under the Government of the State or an office created by or under an Act and required to perform or performing public duties, but does not include a prescribed tribunal.

(2) Subject to the rules, and unless the Court otherwise orders, nothing in subsection (1) affects any proceedings pending in the Court in a Division at the commencement of this section.

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8. (1) The Supreme Court Act, 1970, is further No. 19, 1973
amended—

Further
amendment
of Act No.
52, 1970.

- (a) by omitting section 56 (2) and by inserting instead the following subsection :—

Sec. 56.
(Commer-
cial list.)

(2) The rules may make provision for or with respect to the manner in which proceedings in the Common Law Division, arising out of the ordinary transactions of merchants and traders, or relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking, mercantile agency, or mercantile usages, may be entered in the commercial list, and, without affecting the generality of the foregoing provisions of this subsection, the rules may make provision for or with respect to the entry of proceedings in the commercial list immediately upon the commencement of those proceedings in the Court.

- (b) by omitting from section 56 (3) the words “the Court orders that any proceedings be” and by inserting instead the words “any proceedings are”;
- (c) by inserting next after section 56 (3) the following new subsections :—

(4) Any proceedings entered in the commercial list continue to be or become proceedings in the Common Law Division.

(5) Where any proceedings are entered in the commercial list, the Court, on the application of a party or of its own motion, may, if it is satisfied that it is proper to do so, order on terms that the proceedings be removed from the commercial list, and may make such further orders as to the continuance of the proceedings as it thinks fit.

(2)

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(2) Nothing in subsection (1) affects any proceedings entered in the commercial list under section 56 of the Supreme Court Act, 1970, before the commencement of this section, and that section continues to apply to and in respect of those proceedings in all respects as if this section had not been enacted.

Further amendment of Act No. 52, 1970.

Sec. 48.
(Assignment to the Court of Appeal.)

9. (1) The Supreme Court Act, 1970, is further amended—

(a) by omitting section 48 (2) (i) and by inserting instead the following paragraph :—

(i) for the punishment of contempt of the Court or of any other court ;

(b) by inserting next after section 48 (3) the following new subsection :—

(4) This section does not affect—

(a) the powers of the Court in a Division in relation to punishment for—

(i) contempt in the face of the Court in that Division or in the hearing of the Court in that Division ;

(ii) disobedience to a judgment or order of the Court in that Division ; or

(iii) breach of an undertaking given to the Court in that Division ; or

(b)

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(b) the powers of a master in relation to No. 19, 1973 punishment for—

(i) contempt in the face of the Court or in the hearing of the Court; or

(ii) breach of an undertaking given to the Court,

where the Court is constituted by that master.

(2) Subject to the rules, and unless the Court otherwise orders, nothing in subsection (1) affects any proceedings pending in the Court of Appeal or in the Court in a Division at the commencement of this section.

10. (1) The Supreme Court Act, 1970, is further amended by omitting section 41 (1) (a) and by inserting instead the following paragraph :—

(a) in the Common Law Division by the Chief Judge at Common Law and such other Judges as may be nominated by the Chief Justice to act in that Division.

Further amendment of Act No. 52, 1970.

Sec. 41.

(Judges in the Divisions.)

(2) The Administration of Justice Act, 1924, is amended—

Amendment of Act No. 42, 1924.

(a) by omitting from section 2 the matter relating to Part IV;

Sec. 2. (Division into Parts.)

(b) by omitting Part IV.

Part IV. (Miscellaneous Provisions.)

(3)

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Amendment
of Act No.
11, 1898.New sec.
19A.Questions
of foreign
law to be
decided by
judge.10 & 11
Geo. V,
c. 81, s. 15.
No. 42,
1924, s. 20.

(3) The Evidence Act, 1898, is amended by inserting
next after section 19 the following new section :—

19A. Where, for the purpose of disposing of any legal proceedings being tried by a judge with a jury in any court in New South Wales, it is necessary to ascertain the law of any other country which is applicable to the facts of the case, any question as to the effect of the evidence given with respect to that law shall, instead of being submitted to the jury, be decided by the judge alone.

COMPANIES