

# Supreme Court Act 1970 No 52

[1970-52]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)
  - [Miscellaneous Acts Amendment \(Same Sex Relationships\) Act 2008 No 23](#) (not commenced)
- **See also**
  - [Vexatious Proceedings Bill 2008](#)

### Authorisation

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# Supreme Court Act 1970 No 52



New South Wales

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# Supreme Court Act 1970 No 52



New South Wales

An Act to provide for the concurrent administration of law and equity in the Supreme Court; to amend and consolidate the law with respect to the administration of justice and the procedure and practice of the Supreme Court; to repeal the [Common Law Procedure Act 1899](#), the [Equity Act 1901](#) and certain other Acts; to amend the [Partnership Act 1892](#) and certain other Acts; and for purposes connected therewith.

## Part 1 Preliminary

### Division 1 General

#### 1 Name of Act

This Act may be cited as the [Supreme Court Act 1970](#).

#### 2 Commencement

- (1) Except as provided in subsection (2), this Act shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.
- (2) Part 9 shall commence on the date upon which the assent of Her Majesty to this Act is signified.

#### 3 The Crown

- (1) Subject to this and any other Act, the Crown is bound by, and has the benefit of, this Act and the rules.
- (2) In subsection (1), **Crown** includes not only the Crown in right of New South Wales but also the Crown in all its other capacities.

#### 4 (Repealed)

#### 5 Repeals

Each Act mentioned in the First Schedule to this Act is, to the extent therein expressed, hereby repealed.

## 6 Inconsistency with rules

Any Act in force immediately before the commencement of this Act which is inconsistent with the rules shall be superseded to the extent of such inconsistency and while such inconsistency continues to exist.

## 7 (Repealed)

## 8 Construction of references

(1) In any Act, rule of court or regulation in force immediately before the commencement of this Act:

- (a) a reference to the Court in Banco or to the Full Court or to the Court as a court consisting of two or more Judges shall be construed as a reference to the Court of Appeal,
- (b) a reference to the Court or to a Judge in any of the jurisdictions specified in the First Column of the Table below or to the practice or procedure of the Court in any of those jurisdictions shall be construed as a reference to the Division specified opposite that jurisdiction in the Second Column of that Table or, as the case may be, to the practice or procedure in that Division:

### Table

<b>First Column</b>	<b>Second Column</b>
<b>Jurisdiction</b>	<b>Division</b>
Common Law	Common Law Division
Equity	Equity Division
Probate	Probate Division
Matrimonial Causes	Divorce Division
Protective	Protective Division
Admiralty	Admiralty Division

- (c) a reference to the Judge exercising the matrimonial causes jurisdiction of the Court or appointed to exercise that jurisdiction shall be construed as a reference to the Chief Judge in Divorce,
- (d) a reference to a writ, whether of prohibition, mandamus, or certiorari or of any other description by which the Court formerly had jurisdiction to grant any relief or remedy shall, subject to subsection (2), be construed as a reference to the judgment or order by which the Court may grant that relief or remedy under this Act and the rules,

- (e) a reference to the Master in Equity or to the Master in the protective jurisdiction of the Court shall, subject to the rules, be construed as a reference to the master assigned to the Equity Division or, as the case may be, to the master assigned to the Protective Division or, where two or more masters are so assigned, to the senior master so assigned,
- (f) a reference to the holder of an office named in the First Column of the Table below shall, subject to the rules, be construed as a reference to the holder of the office named in the Second Column of that Table opposite to the name of the firstmentioned office:

**Table**

<b>First Column</b>	<b>Second Column</b>
Prothonotary	Prothonotary
Deputy Master and Registrar in Equity	Registrar in Equity
Registrar of Probates	Registrar in Probate
Registrar in Divorce	Registrar in Divorce
Registrar in Admiralty	Registrar in Admiralty
Registrar of the Court of Appeal	Registrar of the Court of Appeal

- (g) a reference to the verdict or finding of a jury in any proceedings or on any issue in any proceedings on a trial with a jury shall, unless the context or subject matter otherwise indicates or requires, extend, in the case of proceedings on a common law claim tried without a jury pursuant to this Act, to the determination of the Court in the proceedings or on any such issue on a trial without a jury, and
  - (h) a reference to an action of ejectment in the Court shall be construed as a reference to proceedings in the Court for possession of land.
- (2) Paragraph (d) of subsection (1) does not apply to a reference to:
- (a) the writ of habeas corpus ad subjiciendum,
  - (b) any writ of execution for the enforcement of a judgment or order of the Court, or
  - (c) any writ in aid of any such writ of execution.

**9 Non-revivor**

A repeal made by section 5 or an amendment made by section 7 shall not revive anything not in force or existing immediately before the commencement of this Act.

## **Division 2 Abolition of certain matters**

### **10 (Repealed)**

### **11 Distinction between court and chambers**

- (1) The distinction between court and chambers is abolished.
- (2) The business of the Court, whether conducted in court or otherwise, shall be taken to be conducted in court.

### **12 Quo warranto**

Informations in the nature of quo warranto are abolished.

## **Division 3 Transition**

### **13 Judges**

- (1) A person who immediately before the commencement of this Act held any office specified in the Table below shall subject to this Act continue to hold that office under this Act.

#### **Table**

Chief Justice

President of the Court of Appeal

Judge of Appeal

Chief Judge in Equity

Judge exercising the matrimonial causes jurisdiction of the Court

Probate Judge

Judge

- (2) The person who immediately before the commencement of this Act held the office of Judge exercising the matrimonial causes jurisdiction of the Court shall, on the commencement of this Act, be Chief Judge in Divorce.

### **14 Masters**

- (1) Notwithstanding section 111 and section 116, the holder immediately before the commencement of this Act of the office of Master in Equity is hereby:
  - (a) appointed to be a master under this Act, and
  - (b) assigned to the Equity Division and to the Protective Division.

(2) Notwithstanding section 116:

- (a) the assignment by paragraph (b) of subsection (1) shall not be revoked without the consent of the master concerned, and
- (b) the master assigned to the Equity Division and to the Protective Division by that paragraph shall not be assigned to any other Division without the master's consent.

(3) (Repealed)

**15 Registrars and other officers**

Notwithstanding section 120, the holder immediately before the commencement of this Act of each office named in the First Column in the Table in paragraph (f) of subsection (1) of section 8 is hereby appointed to the office under this Act named in the Second Column in that Table opposite to the name of the firstmentioned office, to hold office subject to the provisions of the *Public Service Act 1902*.

**16 Pending proceedings**

- (1) Subject to the rules, and unless the Court otherwise orders, this Act does not apply to, and the repeals and amendments made by this Act do not affect, any proceedings commenced in the Court before the commencement of this Act.
- (2) In particular, but without limiting the generality of subsection (1), subject to the rules, and unless the Court otherwise orders, in the case of any proceedings commenced in the Court before the commencement of this Act, this Act does not apply to, and the repeals and amendments made by this Act do not affect:
  - (a) the completion after the commencement of this Act of any step in the proceedings taken before the commencement of this Act, or
  - (b) the taking and completion after the commencement of this Act of any step in the proceedings.
- (3) Notwithstanding subsections (1) and (2):
  - (a) sections 10 and 98 apply to proceedings commenced in the Court before the commencement of this Act,
  - (b) any person held in custody on the date of commencement of this Act under any attachment or committal (otherwise than for contempt of court) or under any writ of *capias ad respondendum* or writ of *ne exeat* or otherwise on mesne process or under any writ of *capias ad satisfaciendum* shall, unless there is other lawful warrant for holding the person in custody, be discharged from custody on the date of commencement of this Act, and

(c) no writ of foreign attachment under Part 20 of the *Common Law Procedure Act 1899* shall be issued after the commencement of this Act.

(4) For the purposes of this section:

(a) the expression **proceedings** includes:

- (i) any cause, suit, application or matter in or before the Court or for decision or determination by the Court or any Judge of the Court, and
- (ii) any appeal from, or other means of review (whether by way of stated case, statutory prohibition or otherwise) of, any decision or determination of any court, tribunal or person,

(b) the expression **judgment** includes any rule, decree or order, and

(c) the expression **step** includes:

- (i) the entry or other perfecting of any judgment,
- (ii) an appeal to the Court of Appeal,
- (iii) an application for a new trial or for judgment notwithstanding a verdict,
- (iv) a motion in arrest of judgment,
- (v) a new trial,
- (vi) the punishment of contempt in connection with the proceedings,
- (vii) any thing done or to be done by way of execution or enforcement of a judgment in the proceedings,
- (viii) interpleader by any person having the execution of a judgment in the proceedings,
- (ix) an application for a stay of proceedings,
- (x) any thing done or to be done in consequence of an appeal to Her Majesty in Council or to the High Court of Australia,

whether before or after final judgment.

(5) The Court may make orders under this section on application by a party or of its own motion.

## **Division 4 Savings**

### **17 Criminal proceedings**

- (1) Except as provided in this section this Act and the rules do not apply to any of the proceedings in the Court which are specified in the Third Schedule, and no claim for relief lies to the Court against an interlocutory judgment or order given or made in proceedings referred to in paragraph (a1) or (a2) of that Schedule.
- (2) Rules may be made under this Act:
  - (a) for regulating and prescribing the practice and procedure of the Court, and
  - (b) without limiting the generality of paragraph (a), for:
    - (i) providing for the regulation of the sittings and order of business of the Court and the regulation of the vacations and holidays to be observed by the Court and in the offices of the Court, and
    - (ii) prescribing the duties and functions of the Prothonotary and other officers of the Court and the records to be kept by them,

in relation to any of the proceedings in the Court which are specified in the Third Schedule.
- (2A) The provisions of this Act, including Part 9 (subsections (1) and (4) of section 124 excepted), apply in relation to rules made pursuant to subsection (2) as they apply in relation to other rules.
- (3) Subsection (1) does not affect the operation of sections 1, 2, 5, 6, 7, 41, 53, 54, 55, 72, 101 (5) and 130.
- (4) (Repealed)

### **18 Appeal to Privy Council**

- (1) Subject to subsection (2), nothing in this Act or in the rules affects the law formerly existing concerning appeals to Her Majesty in Council.
- (2) The provisions of this Act and the rules apply to proceedings in the Court for leave to appeal to Her Majesty in Council and to proceedings in the Court relating to such an appeal.
- (3) Subsection (2) has effect subject to Orders in Council from time to time in force under the *Australian Courts Act 1828*.

## Division 5 Interpretation

### 19 Definitions generally

(1) In this Act and in the rules, except in so far as the context or subject-matter otherwise indicates or requires:

**claim for relief** includes:

- (a) a claim for the recovery of damages or other money, or for possession of land, or for delivery of goods,
- (b) a claim for a declaration of right,
- (c) a claim for the determination of any question or matter which may be determined by the Court, and
- (d) any other claim (whether legal, equitable or otherwise) justiciable in the Court.

**commencement**, in relation to this Act, means the date appointed under subsection (1) of section 2.

**common law claim** means a claim for damages or other money, or for possession of land, or for detention of goods, in proceedings in the Common Law Division.

**costs** includes fees, charges, disbursements, expenses and remuneration.

**Court** means the Supreme Court of New South Wales.

**defendant** includes any person served with a statement of claim or summons, or served with notice of or entitled to attend any proceedings.

**Division** means a Division of the Court specified in paragraph (b) of section 38.

**formerly** means immediately before the commencement of this Act.

**Judge** means a Judge of the Court but does not include an associate Judge.

**land** includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein, whether vested or contingent, whether freehold or leasehold, and whether at law or in equity.

**minor** means a person under the age of eighteen years.

**prescribed** means prescribed by the rules.

**registrar** means a person who is for the time being appointed to and holding an office of registrar, as referred to in section 119, and includes:



- (a) a person who is for the time being appointed to act temporarily in an office of registrar (as referred to in section 120 (b)), and
- (b) a person who is for the time being appointed as a deputy to the holder of an office of registrar (as referred to in section 120 (c)), whether designated as a deputy, assistant or otherwise, but only when the person is exercising a power conferred by or under this Act or the *Criminal Appeal Act 1912* on the holder of an office of registrar with the authority of that holder or a person for the time being appointed to act temporarily in the office of that holder, and
- (c) a person who is authorised under section 120A to exercise any power conferred by or under this Act or the *Criminal Appeal Act 1912* on the holder of an office of registrar, but only when the person is exercising such a power.

**rules** means rules of the Court from time to time in force and includes:

- (a) rules made by the Rule Committee, and
- (b) rules that have effect, by virtue of section 122, as rules made by the Rule Committee, and
- (c) any Schedule to rules of the Court.

**stated case** means a case stated by the Court in a Division under the rules or under any Act or a case stated under any Act by any other court or by any judge of any other court or other person for the opinion, decision, direction or determination of the Court, and includes:

- (a) an award in the form of a case stated under section 9 of the *Arbitration Act 1902*, and
- (b) a matter referred under section 85 of the *Superannuation Act 1916*.

(2) For the purposes of this Act and the rules, proceedings in the Court under an Act:

- (a) are an appeal if described in that Act or in any regulation made under that Act as an appeal, and
- (b) subject to the rules, are not an appeal if not so described.

(3) Notes included in this Act do not form part of this Act.

## **20, 21 (Repealed)**

### **21A Construction of references to Divorce Division**

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:

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

## **Part 2 The Court**

### **Division 1 Continuance and jurisdiction**

#### **22 Continuance**

The Supreme Court of New South Wales as formerly established as the superior court of record in New South Wales is hereby continued.

#### **23 Jurisdiction generally**

The Court shall have all jurisdiction which may be necessary for the administration of justice in New South Wales.

#### **24 Court to have powers of Judges etc**

- (1) In this section **special office** means the office of Chief Judge in Equity, Chief Judge in Divorce, Probate Judge, and any other special judicial office in the Court.
- (2) Where, under the law in force immediately before the commencement of this Act, any power is vested in the Judges collectively, or in any two or more Judges, or in any Judge in special office, or in any Judge:
  - (a) that power shall be exercised by the Court in all respects as those Judges or that Judge might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules,
  - (b) the Court shall have power co-ordinate with the power of those Judges or that Judge, and
  - (c) subject to paragraphs (a) and (b), that power shall not be exercised by those Judges or that Judge.
- (3) Where, under the law in force immediately before the commencement of this Act, any power is vested in the Court, whether generally or in any jurisdiction of the Court, that power shall be exercised by the Court in all respects as the Court might have exercised the power immediately before the commencement of this Act, but in accordance with this Act and the rules.
- (4) This section has effect even though:

- (a) in the case of a power vested in a Judge in special office, the special office has been abolished, whether before or after the commencement of this Act, or the special office is vacant,
  - (b) the power in question is vested in the Court as a designated Court, in the Judges collectively or any two or more Judges as designated persons, or in any Judge in special office or any Judge as a designated person, or
  - (c) exercise of the power is expressed under the law in force immediately before the commencement of this Act to be final or without appeal.
- (5) This section applies to a power which, immediately before the commencement of this Act, is exercisable by rule nisi or rule absolute in any proceedings or by other rule in the nature of an order or direction in any proceedings, but otherwise does not apply to a power to make rules.
- (6) This section does not apply to a power:
- (a) vested in the Chief Justice as Chief Justice,
  - (b) vested in the Chief Judge in Equity in relation to the making of general orders under Division 1 of Part 24 of the [Conveyancing Act 1919](#),
  - (c) (Repealed)
  - (d) vested in a Judge as chairman, or additional temporary chairman, of the Crown Employees Appeal Board,
  - (e) vested in a Judge in special office or other Judge as member (whether chairman or otherwise) of a board, committee or other body of persons not composed wholly of Judges.
- (7) The Governor may direct by proclamation that this section shall not apply to any power specified in the proclamation, being a power arising under any Act or Imperial Act in force immediately before the commencement of this Act, and the proclamation shall have effect accordingly, but subject to section 41 of the [Interpretation Act 1987](#).
- (8) Sections 39, 40 and 41 of the [Interpretation Act 1987](#) apply to a proclamation under subsection (7) in the same way as they apply to a statutory rule within the meaning of that Act.
- (9), (10) (Repealed)

## **Division 2 The Judges generally**

### **25 Composition of Court**

The Court shall be composed of a Chief Justice, a President of the Court of Appeal and

such other Judges of Appeal, Judges and associate Judges as the Governor may from time to time appoint.

## **26 Appointment and qualifications: Chief Justice and other Judges**

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be Chief Justice or a Judge.
- (2) A person is qualified for appointment as Chief Justice or as a Judge if the person:
  - (a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or
  - (b) is an Australian lawyer of at least 7 years' standing.
- (3) (Repealed)

## **27 Chief Judges**

- (1) The Governor may, by commission under the public seal of the State, appoint any Judge to be:
  - (a) Chief Judge of the Common Law Division (whose title is Chief Judge at Common Law), or
  - (b) Chief Judge of the Equity Division (whose title is Chief Judge in Equity).
- (2) A Judge may be appointed a Chief Judge either at the time of his or her appointment as a Judge or at any time afterwards.
- (3) A Chief Judge holds that office so long as he or she holds office as a Judge.
- (4) A Chief Judge may, with the approval of the Governor, resign that office without resigning his or her office as a Judge.

## **28 List Judges**

- (1) The Chief Justice may, by instrument in writing, designate a Judge to be a List Judge within a Division.
- (2) A List Judge within a Division has (subject to any direction from the Chief Justice or the Chief Judge of the Division) the function of managing such class or classes of proceedings in the Division as may be specified in the instrument designating the Judge to be a List Judge or by the rules.
- (3) A Judge may be designated to be a List Judge within a Division under this section even though the Judge is not appointed or nominated to the Division. Any such Judge is taken to be appointed to the Division for the purposes of exercising his or her functions as a List Judge.

- (4) An instrument designating a Judge to be a List Judge may specify a title for the Judge to use while exercising the functions of a List Judge.
- (5) The Chief Justice may at any time, by instrument in writing, revoke a Judge's designation as a List Judge.
- (6) The designation of a Judge to be a List Judge under this section does not affect the rank, title, status and precedence as a Judge that he or she had immediately before any such designation.

**28A Special provisions as to Chief Judges who are not Judges of Appeal**

- (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 holding 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 the Chief Judge's 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 the Judge's 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 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.
- (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 or her office as a Chief Judge

without resigning his or her office as a Judge, he or she shall then have the seniority, rank, status and precedence he or she would have had if he or she 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 the Judge's commission as a Judge, or
  - (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 the Judge's commission as Chief Judge.

## **29 Remuneration**

- (1) The Judges are entitled to be paid remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*.
- (2) The remuneration referred to in subsection (1) and payable to each Judge shall be paid to the Judge so long as the Judge's commission continues in force.

## **30 Interest in rate or tax**

- (1) The Chief Justice, a Judge of Appeal or a Judge shall not be incapable of acting in his or her judicial office in any proceedings, nor shall any associate Judge or registrar or other officer of the Court be incapable of acting in his or her office in any proceedings, by reason of his or her being as one of several ratepayers or as one of any other class of persons liable, in common with others, to contribute to or to be benefited by any rate or tax which may be increased, diminished or in any way affected by those proceedings.
- (2) In this section **rate or tax** means any rate, tax, duty or assessment whether public, general or local, and also any fund formed from the proceeds of any such rate, tax, duty or assessment, or applicable to the same or like purposes to which any such rate, tax, duty or assessment might be applied.

## **Division 3 Judges of Appeal**

### **31 Appointment**

- (1) The Governor may, by commission under the public seal of the State, appoint any Judge to be a Judge of Appeal.
- (2) A Judge may be appointed to be a Judge of Appeal either at the time of his or her appointment as a Judge or at any time afterwards.
- (3) A Judge of Appeal shall continue to be a Judge and may from time to time sit as or

exercise any of the powers of a Judge.

- (4) A Judge who, at the time of his or her appointment as Judge of Appeal, holds the office of Chief Judge in Equity shall continue to hold that office and may sit as or exercise any of the powers and functions of the Chief Judge in Equity.
- (5) A Judge of Appeal shall hold office as a Judge of Appeal so long as he or she holds office as a Judge.
- (6) With the approval of the Governor, a Judge of Appeal may resign his or her office as Judge of Appeal without resigning his or her office as a Judge.

### **32 Appointment of President**

- (1) The Governor may, by commission under the public seal of the State, appoint a Judge of Appeal to be President of the Court of Appeal.
- (2) A Judge of Appeal may be appointed to be President of the Court of Appeal at the time of his or her appointment as a Judge of Appeal or at any time afterwards.

### **33 Seniority**

- (1) The Judge of Appeal shall have seniority, rank and precedence over all the Judges (including any Judge who is for the time being an additional Judge of Appeal) except the Chief Justice 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.
- (2) The President of the Court of Appeal shall have seniority, rank and precedence over the Judges of Appeal referred to in paragraph (c) of section 42, and those Judges of Appeal shall have seniority, rank and precedence between themselves according to the dates (whether before or after the commencement of this Act) of their commissions as Judges of Appeal.
- (3) If the commissions of two or more Judges of Appeal bear the same date they shall have seniority, rank and precedence according to the seniority, rank and precedence assigned to them by their commissions, or failing such assignment according to the order of their being sworn.
- (4) If a Judge of Appeal resigns his or her office as a Judge of Appeal without resigning his or her office as a Judge, he or she shall then have, as a Judge, the seniority, rank, status and precedence he or she would have had if he or she had not been appointed a Judge of Appeal.

### **34 Vacancies**

- (1) Where there is a vacancy in the office of President of the Court of Appeal, or the President is absent from duty, the senior of the other Judges of Appeal (except the

Chief Justice) willing to act as President shall act as President, shall execute the duties of that office, and may exercise all the powers which may lawfully be exercised by the President.

- (2) The jurisdiction of the Court of Appeal shall not be affected by any vacancy in the office of Chief Justice or of President.

## **Division 4 Acting and additional appointments**

### **35 Acting Chief Justice**

- (1) The Governor may, by commission under the public seal of the State, appoint the President of the Court of Appeal, any Judge of Appeal or any Judge to be Acting Chief Justice during such period as the Chief Justice is absent from duty or there is a vacancy in the office of the Chief Justice.
  - (1A) While the Chief Justice is absent from Australia and an Acting Chief Justice has not been appointed under subsection (1), the President of the Court of Appeal is taken to be the Acting Chief Justice.
  - (1B) The reference to the President of the Court of Appeal in subsection (1A) does not extend to any Judge of Appeal who is for the time being acting as President under section 34.
- (2) While holding office, the Acting Chief Justice shall have the powers, authorities, privileges, immunities and precedence, and shall fulfil the duties of the Chief Justice and is entitled to be paid remuneration at the rate provided for the Chief Justice.

### **36 Additional Judges of Appeal**

- (1) The Governor may, by commission under the public seal of the State, appoint any Judge to act as an additional Judge of Appeal during such period not exceeding six months as may be specified in the commission.
- (2) Whenever the Chief Justice certifies that in any proceeding before the Court of Appeal it is expedient that a Judge nominated in the certificate should act as an additional Judge of Appeal, the Judge so nominated may act as an additional Judge of Appeal for the purposes of that proceeding.
- (3) Every additional Judge of Appeal appointed or nominated pursuant to this section shall, while so acting, have all the powers, authorities, privileges and immunities and shall fulfil all the duties of a Judge of Appeal.
- (4) The fact that any Judge sits and acts as an additional Judge of Appeal shall be sufficient evidence of the Judge's authority to do so, and no judgment or order of the Court of Appeal while the Judge so acts shall be questioned on the ground that the occasion for the Judge's so acting had not arisen or had ceased to exist.



- (5) Every Judge who, pursuant to this section, has acted as an additional Judge of Appeal may attend the sittings of the Court of Appeal for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by that Court while the Judge so acted, notwithstanding that the Judge is no longer an additional Judge of Appeal.

### **37 Acting Judges**

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to act as a Judge, or as a Judge and a Judge of Appeal, for a time not exceeding 12 months to be specified in such commission.
- (2) In subsection (1) **qualified person** means any of the following persons:
- (a) a person qualified for appointment as a Judge of the Supreme Court of New South Wales,
  - (b) a person who is or has been a judge of the Federal Court of Australia,
  - (c) a person who is or has been a judge of the Supreme Court of another State or Territory.
- (3) A person appointed under this section shall, for the time and subject to the conditions or limitations specified in the person's commission, have all the powers, authorities, privileges and immunities and fulfil all the duties of a Judge and (if appointed to act as such) a Judge of Appeal.
- (3A) The person so appointed may, despite the expiration of the period of the person's appointment, complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period.
- (3B) The person so appointed is entitled to be paid remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#). The remuneration payable to an acting Judge is to be paid to the acting Judge so long as his or her commission continues in force.
- (4) A retired Judge of the Court or of another court in New South Wales (including a retired judicial member of the Industrial Commission or of the Industrial Relations Commission) may be so appointed even though the retired Judge has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.
- (4A) A person who is or has been a judge of the Federal Court of Australia or of the Supreme Court of another State or Territory may be so appointed even though that person has reached the age of 72 years (or will have reached that age before the

appointment expires) but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.

- (5) The conditions or limitations specified in a commission under this section may exclude the whole or any part of the period of appointment from being regarded as prior judicial service (within the meaning of section 8 of the *Judges' Pensions Act 1953*) by the person.
- (6) The provisions of section 36 (4) and (5) apply to an acting Judge who acts as a Judge of Appeal in the same way as they apply to a Judge who acts as an additional Judge of Appeal.

### **37A Certain Chief Judges of other courts may act as additional Judges of Appeal**

- (1) This section applies to each of the following Chief Judges (a ***designated Chief Judge***):
  - (a) the Chief Judge of the Land and Environment Court,
  - (b) the Chief Judge of the District Court.
- (2) A designated Chief Judge may act as an additional Judge of Appeal in relation to proceedings in the Court of Appeal if:
  - (a) the Chief Justice certifies that it is expedient that the Chief Judge should act as an additional Judge of Appeal in the proceedings, and
  - (b) the Chief Judge consents to act as an additional Judge of Appeal in the proceedings.
- (3) The following provisions apply to and in respect of a designated Chief Judge who acts as an additional Judge of Appeal pursuant to the provisions of this section:
  - (a) the Chief Judge has, while acting as an additional Judge of Appeal, all the powers, authorities, privileges and immunities of a Judge of Appeal (including the powers, authorities, privileges and immunities of a Judge of the Supreme Court),
  - (b) the Chief Judge may attend the sittings of the Court of Appeal for the purpose of giving judgment in, or otherwise completing, any proceedings which have been heard by the Court while the Chief Judge was acting as an additional Judge of Appeal even if the Chief Judge is no longer acting as an additional Judge of Appeal,
  - (c) the Chief Judge is not, while receiving remuneration as a Chief Judge, entitled to remuneration for acting as an additional Judge of Appeal,
  - (d) any service of the Chief Judge while acting as an additional Judge of Appeal is, for the purposes of the Act under which the Chief Judge was appointed and the *Judges' Pensions Act 1953*, taken to be service as the Chief Judge of the court

concerned,

- (e) nothing in this Act or any other law requires the Chief Judge to devote the whole of his or her time to the duties of acting as an additional Judge of Appeal.

## **Division 5 Organisation**

### **38 Divisions of Court**

For the more convenient despatch of business, the Court shall be divided into:

- (a) the Court of Appeal, and
- (b) the following Divisions:
  - (i) the Common Law Division,
  - (ii) the Equity Division.
  - (iii)–(ix) (Repealed)

### **39 Intra-curial arrangements**

- (1) Intra-curial arrangements for the transaction by the Judges of Appeal of the business of the Court of Appeal shall be made by the President of the Court of Appeal with the concurrence of the Chief Justice.
- (2) Intra-curial arrangements for the transaction of the business of any Division, by the Judges appointed or nominated to that Division:
  - (a) may be made by all the Divisional Judges or by a majority of those of them present at a meeting summoned for that purpose and attended by at least ten of them,
  - (b) subject to any arrangement made as provided by paragraph (a), shall be made by the Chief Justice, and
  - (c) in the case of a Division of which there is a Chief Judge, but subject to any arrangement made as provided by paragraph (a) or paragraph (b), shall, subject to subsection (2A), be made by the Chief Judge.
- (2A) Subject to any arrangement made as provided by subsection (2) (a), a Chief Judge shall be responsible to the Chief Justice for, and be subject to the direction of the Chief Justice in respect of, the transaction of the business and the administration of the Chief Judge's Division.
- (3) For the purposes of subsection (2) **Divisional Judges** means the Chief Justice and all the Judges except any Judge not appointed or nominated to a Division.
- (4) This section has effect notwithstanding section 124.

#### **40 Single Judge to constitute the Court**

- (1) All proceedings in any Division and all business arising out of proceedings in a Division shall be heard and disposed of before a Judge, who shall constitute the Court.
- (2) Subsection (1) does not affect the provisions of this Act and the rules concerning the hearing and disposal of proceedings and business before an associate Judge or before a registrar or other officer of the Court.

#### **41 Judges in the Divisions**

- (1) Subject to subsection (2), the jurisdiction of the Court shall be exercised in the Divisions as follows:
  - (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,
  - (b) in the Equity Division by the Chief Judge in Equity and such other Judge or Judges as may be nominated by the Chief Justice to act in that Division.
  - (c)-(h) (Repealed)
- (2) Any Judge may exercise the jurisdiction of the Court in any Division with all the power and authority of a Judge appointed or nominated under this or any other Act to act in that Division.
- (3) A Judge so appointed or nominated may be appointed or nominated to act concurrently in any other Division.
- (4) (Repealed)

### **Division 6 The Court of Appeal**

#### **42 Composition**

Subject to this Part, the Court of Appeal shall consist of:

- (a) the Chief Justice who shall, by virtue of his or her office, be a Judge of Appeal and the senior member of the Court of Appeal,
- (b) the President of the Court of Appeal, and
- (c) such other Judges as are appointed to be Judges of Appeal.

#### **43 Sittings**

- (1) Any 3 or more Judges of Appeal constitute the Court of Appeal.
- (2) At a sitting of the Court of Appeal at which the Chief Justice is present the Chief Justice shall preside.

- (3) In the absence of the Chief Justice, the President of the Court of Appeal shall preside.
- (4) In the absence of both the Chief Justice and the President, the senior Judge of Appeal present shall preside.
- (5), (6) (Repealed)

#### **43A Multiple sittings**

More than one sitting of the Court of Appeal (constituted by 2 or more Judges of Appeal) may be held at the same time.

#### **44 Jurisdiction**

The Court of Appeal may, in proceedings before it, exercise every power, jurisdiction or authority of the Court, whether at law or in equity or under any Act, Imperial Act or Commonwealth Act.

#### **45 Appeals**

- (1) The decision of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges of Appeal present.
- (2) If the Judges of Appeal present are equally divided in opinion the decision of the Court of Appeal shall be in accordance with the opinion of the Chief Justice or other Judge of Appeal presiding.
- (3) (Repealed)
- (4) If, in dismissing an appeal, the Court of Appeal is of the unanimous opinion that the appeal does not raise any question of general principle, it may, in accordance with the rules, give reasons for its decision in short form.

#### **45AA Continuation of appeal if one or more Judges unable to continue**

- (1) If an appeal is commenced before 3 or more Judges of Appeal and, before the appeal is determined, one or more of the Judges dies, resigns from office or otherwise becomes unable to continue as a member of the Court of Appeal for the purposes of the appeal, the hearing and determination of the appeal may be completed by the remaining Judges of Appeal so long as at least 2 Judges remain and the parties consent.
- (2) If the appeal concerned is to be heard and determined by only 2 Judges of Appeal and those Judges are divided in opinion:
  - (a) as to the decision determining the appeal—the appeal is to be reheard and determined by the Court of Appeal constituted by such 3 or more Judges of Appeal as the President of the Court of Appeal directs (including, if practicable, the 2 Judges of Appeal who completed the hearing of the appeal), or

(b) as to any other decision—the decision of the Court is to be in accordance with the opinion of the senior Judge present.

(3) This section has effect despite any other provision of this Division.

#### **45A Judgment of Court of Appeal may be delivered by single Judge of Appeal**

- (1) When judgment in a proceeding in the Court of Appeal is delivered it is not necessary for any of the Judges of Appeal before whom it was heard to be present in court to state their opinions.
- (2) The opinion of any of the Judges of Appeal may be reduced to writing and made public by any Judge of Appeal when judgment in the proceeding is delivered.
- (3) The judgment of the Court of Appeal has the same effect as if each Judge of Appeal whose opinion is so made public had been present in court and declared his or her opinion in person.
- (4) For the purpose of delivering judgment the Court of Appeal may be constituted by one or more Judges of Appeal.

#### **46 Powers of Judge of Appeal**

- (1) A Judge of Appeal may exercise the powers of the Court of Appeal:
  - (a) to give any judgment by consent or make any order by consent,
  - (b) to dismiss an appeal or other proceedings for want of prosecution or for other cause specified in the rules,
  - (c) to dismiss an appeal or other proceedings on the application of the appellant or plaintiff, or
  - (d) to deal with costs and other matters incidental to the matters mentioned in paragraphs (a), (b) and (c).
- (2) A Judge of Appeal may exercise the powers of the Court of Appeal:
  - (a) to make an order or give any direction concerning the institution of an appeal or other proceedings in the Court of Appeal, or
  - (b) to make any order or give any direction in any appeal or other proceedings, but not an order or direction involving the determination or decision of the appeal or other proceedings.
- (3) Subsection (2) does not authorise a Judge of Appeal to grant or refuse leave to appeal to the Court of Appeal.
- (4) The Court of Appeal may discharge or vary a judgment given by a Judge of Appeal, or

an order made or direction given by a Judge of Appeal.

- (5) Subject to subsection (4), a judgment, order or direction given or made by a Judge of Appeal is to have effect as a judgment, order or direction of the Court of Appeal, whether or not the judgment, order or direction is within the powers of the Judge of Appeal under this section.

**46A Certain appeals may be heard by 2 Judges of Appeal**

- (1) This section applies to an appeal to the Court of Appeal:
- (a) from any court, where the appeal relates solely to the amount of damages awarded in respect of the death of, or bodily injury to, a person, or
  - (b) from the Compensation Court or the District Court (in respect of a matter that would have been within the jurisdiction of the Compensation Court had the *Compensation Court Repeal Act 2002* not been enacted), where the appeal relates solely to the amount of compensation awarded by that Court, or
  - (c) from the Dust Diseases Tribunal, where the appeal relates solely to the amount of compensation awarded by that Tribunal, or
  - (d) from a court or tribunal (other than the Supreme Court), where:
    - (i) the leave of the Court of Appeal is required in respect of the appeal, and
    - (ii) the appeal is not against a final judgment, order, award or decision of the court or tribunal (other than an order for the payment of costs).
- (2) The Chief Justice may direct that such an appeal be heard and determined by such 2 Judges of Appeal as the President of the Court of Appeal directs.
- (3) Such a direction may only be given if the Chief Justice is of the opinion that the appeal is not likely to require the resolution of a disputed issue of general principle.
- (4) For the purpose of an appeal the subject of a direction under this section, the Court of Appeal is constituted by the 2 Judges directed by the President of the Court of Appeal.
- (5) The decision of the Court of Appeal when constituted by 2 Judges is to be in accordance with the opinion of those Judges.
- (6) If the Judges are divided in opinion:
- (a) as to the decision determining the proceedings, the appeal is to be reheard and determined by the Court of Appeal constituted by such 3 Judges of Appeal as the President of the Court of Appeal directs (including, if practicable, the 2 Judges who first heard the appeal), or
  - (b) as to any other decision, the decision of the Court is to be in accordance with the

opinion of the senior Judge present.

- (7) Proceedings heard by the Court of Appeal constituted by 2 Judges under this section are rendered abortive for the purposes of section 6A (1) (a1) of the *Suitors' Fund Act 1951* if they are required to be reheard because the judges were divided in opinion as to the decision determining the proceedings. The rehearing of the proceedings is considered to be a new trial for the purposes of that Act.

#### **46B Certain other matters may be heard by 2 Judges**

- (1) This section applies to the following applications:
- (a) applications for leave to appeal,
  - (b) applications involving a question of practice and procedure in an appeal or other matter in the Court of Appeal (being applications that are not capable of being dealt with by a single Judge of Appeal).
- (2) The Chief Justice may direct that such an application be heard and determined by such 2 Judges of Appeal as the President of the Court of Appeal directs.
- (3) For the purpose of hearing and determining an application the subject of a direction under this section, the Court of Appeal is constituted by the 2 Judges directed by the President of the Court of Appeal.
- (4) The decision of the Court of Appeal when constituted by 2 Judges of Appeal is to be in accordance with the opinion of those Judges.
- (5) If the judges are divided in opinion, the application is to be reheard and determined by the Court of Appeal constituted by 3 Judges of Appeal.

### **Part 3 Distribution of business**

#### **Division 1 Distribution between Court of Appeal and Divisions**

##### **47 (Repealed)**

##### **48 Assignment to the Court of Appeal**

- (1)
- (a) In this section:
- specified tribunal*** means:
- (i) the Land and Environment Court or a Judge of that Court,
  - (ia) (Repealed)
  - (ii) the Industrial Relations Commission or a member of that Commission,



- (iia) the Dust Diseases Tribunal of New South Wales,
- (iii) the Government and Related Employees Appeal Tribunal or a member of the Tribunal who is the Senior Chairman, the Acting Senior Chairman or a Chairman of the Tribunal,
- (iv) the District Court or a Judge of the District Court,
- (v) the Compensation Court of New South Wales,
- (vi) a judge or member functioning or purporting to function under any Act giving power to a judge or member, whether as judge or member or as a designated person,
- (vii) a body of persons having amongst its number a judge or member, being a body functioning or purporting to function under any Act giving power to a body having amongst its number a judge or member, whether as judge or member or as a designated person, but not including the State Parole Authority, or
- (viii) the Legal Services Division of the Administrative Decisions Tribunal.

(b) In subparagraphs (vi) and (vii) of paragraph (a) **judge or member** means a judge or member mentioned in any of subparagraphs (i) to (v) inclusive of that paragraph.

(2) There are assigned to the Court of Appeal proceedings in the Court:

- (a) (Repealed)
- (b) for commanding or otherwise requiring a specified tribunal to perform a public duty,
- (c) for prohibiting or otherwise restraining a specified tribunal from proceeding in any matter before the tribunal,
- (d) for commanding or otherwise requiring the removal into the Court of any matter before a specified tribunal, whether for the purpose of quashing or otherwise, but this paragraph has effect subject to subsection (3),
- (e) for determining, by declaration or otherwise, any matter concerning the powers of a specified tribunal,
- (f) on an appeal from a specified tribunal,
- (g) for otherwise reviewing a decision of a specified tribunal,
- (h) on a case stated by a specified tribunal,

- (i) for the punishment of contempt of the Court, but only if the contempt consists of:
  - (i) contempt in the face of, or in the hearing of, the Court of Appeal, or
  - (ii) disobedience of a judgment or order of the Court of Appeal, or
  - (iii) breach of an undertaking given to the Court of Appeal,including proceedings in which the Court of Appeal is constituted by an associate Judge,
- (j) for such matters as are necessary or convenient for the discharge of the functions of the Court of Appeal, and
- (k) for such matters as are prescribed by the rules.

(3) Notwithstanding paragraph (d) of subsection (2), the rules may provide for the assignment to the Divisions of the Court of proceedings in the Court for commanding or otherwise requiring the removal into the Court of any matter before a specified tribunal in cases not involving a review of a decision of a specified tribunal.

(4) (Repealed)

#### **49 Assignment to the Divisions**

Subject to Part 7, proceedings in the Court which are not assigned to the Court of Appeal are assigned to the Divisions of the Court.

#### **50 (Repealed)**

#### **51 Removal and remission**

- (1) Where proceedings are commenced in a Division but are, under this or any other Act or under the rules, assigned to the Court of Appeal:
  - (a) the proceedings shall be for all purposes well commenced on the date of commencement in the Division, notwithstanding that the proceedings are assigned to the Court of Appeal,
  - (b) the Court of Appeal or the Court in the Division in which the proceedings are pending may, in either case on application by a party or of its own motion, order that the proceedings be removed into the Court of Appeal,
  - (c) upon an order for removal being made under paragraph (b), the proceedings may be continued and disposed of in the Court of Appeal, and
  - (d) subject to any order under paragraph (b) the proceedings may be continued and disposed of in a Division.
- (2) Where proceedings are commenced in the Court of Appeal but are, under this or any

other Act or under the rules, assigned to a Division:

- (a) the proceedings shall be for all purposes well commenced on the date of commencement in the Court of Appeal, notwithstanding that the proceedings are assigned to a Division,
- (b) the Court of Appeal may, on application by a party or of its own motion, order that the proceedings be remitted to a Division,
- (c) upon an order for remission being made under paragraph (b), the proceedings may be continued and disposed of in a Division, and
- (d) subject to any order under paragraph (b), the proceedings may be continued and disposed of in the Court of Appeal.

(3) (Repealed)

(4) Where any proceedings are pending before the Court of Appeal, the Court of Appeal may, on application by a party or of its own motion, order that the whole or any part of the proceedings be remitted to a Division for the determination by trial or otherwise of the proceedings or any question arising in the proceedings.

(5) Where proceedings by way of appeal or otherwise under any Act other than this Act or proceedings on a stated case, other than a case stated by the Court in a Division, are commenced in a Division:

- (a) the Court in the Division in which the proceedings are pending, if satisfied that special circumstances exist which render it desirable so to do, may, on application by a party or of its own motion, order that the proceedings be removed into the Court of Appeal, and
- (b) upon an order being made under paragraph (a), the proceedings may be continued and disposed of in the Court of Appeal.

(6) Proceedings may be removed into the Court of Appeal under this section notwithstanding that any decision or determination in the proceedings is expressed by any Act to be final or without appeal.

(7) None of the foregoing subsections limits the operation of any of the others.

(8) This section does not limit the provision which may be made by the rules for removal or remission of proceedings.

## **Division 2 Distribution amongst Divisions**

### **52 Arrangements for despatch of business**

The business of the Court, other than the Court of Appeal, shall, for convenient despatch,

be assigned in accordance with this Division.

### **53 Assignment of business**

- (1) Subject to the rules, there are assigned to the Common Law Division all proceedings:
  - (a) that, immediately before the commencement of this section, were assigned to the Division by or under any Act, or
  - (b) that are required by or under any Act from time to time in force to be commenced, heard or determined in that Division, or
  - (c) that are assigned to the Division by operation of Part 8 of the Fourth Schedule, or
  - (d) that are not assigned to the Equity Division by or under this Act.
- (2) Subject to the rules, there are assigned to the Equity Division all proceedings:
  - (a) that, immediately before the commencement of this section, were assigned to the Division by or under any Act, or
  - (b) that are required by or under any Act from time to time in force to be commenced, heard or determined in that Division, or
  - (c) that are assigned to the Division by operation of Part 8 of the Fourth Schedule.
- (3) Subject to the rules, there are assigned to each Division proceedings for the punishment of contempt of the Court, but only if the contempt consists of:
  - (a) contempt in the face of, or in the hearing of, the Court in that Division, or
  - (b) disobedience of a judgment or order of the Court in that Division, or
  - (c) breach of an undertaking given to the Court in that Division,including proceedings in which the Court is constituted by an associate Judge.
- (4) Without limiting subsection (1) (d), the proceedings assigned to the Common Law Division include proceedings for contempt of the Court or of any other court (other than proceedings referred to in subsection (3) or section 48 (2) (i)).

### **54 Transfer and retention**

- (1) The Court in a Division, on application by a party or of its own motion, may, on terms, order that the whole or any part of any proceedings in that Division be transferred to another Division.
- (2) Proceedings may be retained in a Division whether or not the proceedings are assigned to that Division by this Act or by the rules.

## **55 Validity of proceedings in any Division**

Any step taken, order made, judgment given or other thing done in any proceedings in any Division shall be as valid in every way as if taken, made, given or done in the Division to which the proceedings are assigned by this Act or by the rules.

## **Division 3**

### **56 (Repealed)**

## **Part 4 Law and equity**

### **57 Concurrent administration**

The Court shall administer concurrently all rules of law, including rules of equity.

### **58 Equities of plaintiff**

Where a plaintiff claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim whatsoever asserted by any defendant in the proceedings, or to any relief founded upon a legal right which formerly could only have been given by a court of equity, the Court shall give to the plaintiff the same relief as ought formerly to have been given by a court of equity in proceedings for the like purpose.

### **59 Equitable defences**

Where a defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract or against any right, title or claim asserted by any plaintiff in the proceedings, or alleges any ground of equitable defence to any claim of the plaintiff, the Court shall give to every equitable estate, right or ground of relief so claimed, and every equitable defence so alleged, the same effect by way of defence against the claim of the plaintiff as a court of equity ought formerly to have given if the like matters had been relied on by way of defence in any proceedings instituted for the like purpose.

### **60 Incidental equities**

The Court shall recognise and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any proceedings, in the manner in which a court of equity would have recognised and taken notice of those matters in any proceedings instituted therein.

### **61 Defence or stay instead of injunction**

- (1) The Court shall not restrain by injunction any proceedings pending in the Court.
- (2) Every matter of equity on which an injunction against the prosecution of proceedings in the Court might formerly have been obtained, whether on terms or conditions or

not, may be relied on by way of defence in the proceedings.

- (3) Where any person, whether a party to proceedings in the Court or not:
- (a) would formerly have been entitled to apply to the Court to restrain the prosecution of the proceedings, or
  - (b) is entitled to enforce by attachment or otherwise any judgment or order in contravention of which the proceedings are taken,

the Court may, on application by the person, stay the proceedings either generally or to such extent as the Court thinks fit.

- (4) This section does not affect the powers of the Court to stay proceedings otherwise than pursuant to this section.

## **62 Common law and statutory rights and duties**

Subject to the provisions of this Act for giving effect to equitable rights and other matters of equity, and subject to section 5 of the [Law Reform \(Law and Equity\) Act 1972](#), the Court shall give effect to all legal claims and demands and all estates, titles, rights, duties, obligations and liabilities existing by the common law or by any custom, or created by any statute.

## **63 Final determination**

The Court shall grant, either absolutely or on terms, all such remedies as any party may appear to be entitled to in respect of any legal or equitable claim brought forward in the proceedings so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

## **64 (Repealed)**

# **Part 5 Powers**

## **Division 1 Powers generally**

### **65 Order to fulfil duty**

- (1) The Court may order any person to fulfil any duty in the fulfilment of which the person seeking the order is personally interested.
- (2) The Court may, on terms, make an interlocutory order under subsection (1) in any case where it appears to the Court just or convenient so to do.
- (3) The powers of the Court under this section are in addition to any other powers of the Court.

## **66 Injunction**

- (1) The Court may, at any stage of proceedings, by interlocutory or other injunction, restrain any threatened or apprehended breach of contract or other injury.
- (2) Subsection (1) applies as well in a case where an injury is not actionable unless it causes damage as in other cases.
- (3) The Court may restrain any threatened or apprehended waste or trespass pursuant to this section:
  - (a) 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
  - (b) whether the estate claimed by any party is legal or equitable.
- (4) The Court may, at any stage of proceedings, on terms, grant an interlocutory injunction in any case in which it appears to the Court to be just or convenient so to do.

## **67 Receiver**

The Court may, at any stage of proceedings, on terms, appoint a receiver by interlocutory order in any case in which it appears to the Court to be just or convenient so to do.

## **68 Damages in case for equitable relief**

Where the Court has power:

- (a) to grant an injunction against the breach of any covenant, contract or agreement, or against the commission or continuance of any wrongful act, or
- (b) to order the specific performance of any covenant, contract or agreement,

the Court may award damages to the party injured either in addition to or in substitution for the injunction or specific performance.

## **69 Proceedings in lieu of writs**

- (1) Where formerly:
  - (a) the Court had jurisdiction to grant any relief or remedy or do any other thing by way of writ, whether of prohibition, mandamus, certiorari or of any other description, or
  - (b) in any proceedings in the Court for any relief or remedy any writ might have issued out of the Court for the purpose of the commencement or conduct of the proceedings, or otherwise in relation to the proceedings, whether the writ might

have issued pursuant to any rule or order of the Court or of course,

then, after the commencement of this Act:

- (c) the Court shall continue to have jurisdiction to grant that relief or remedy or to do that thing; but
- (d) shall not issue any such writ, and
- (e) shall grant that relief or remedy or do that thing by way of judgment or order under this Act and the rules, and
- (f) proceedings for that relief or remedy or for the doing of that thing shall be in accordance with this Act and the rules.

(2) Subject to the rules, this section does not apply to:

- (a) the writ of habeas corpus ad subjiciendum,
- (b) any writ of execution for the enforcement of a judgment or order of the Court, or
- (c) any writ in aid of any such writ of execution.

(3) It is declared that the jurisdiction of the Court to grant any relief or remedy in the nature of a writ of certiorari includes jurisdiction to quash the ultimate determination of a court or tribunal in any proceedings if that determination has been made on the basis of an error of law that appears on the face of the record of the proceedings.

(4) For the purposes of subsection (3), the face of the record includes the reasons expressed by the court or tribunal for its ultimate determination.

(5) Subsections (3) and (4) do not affect the operation of any legislative provision to the extent to which the provision is, according to common law principles and disregarding those subsections, effective to prevent the Court from exercising its powers to quash or otherwise review a decision.

#### **69A Releases on bail and custody of claimants seeking judicial review of conviction or sentence**

- (1) This section and section 69B apply to proceedings in the Court by a convicted person (**the claimant**) seeking judicial review in relation to a conviction or sentence for an offence.
- (2) A claimant who is not released on bail must, pending the determination of the proceedings, be treated in such manner as may be directed by regulations made under the *Crimes (Administration of Sentences) Act 1999* (which is referred to in this section as **special treatment**).
- (3) The time during which a claimant is at liberty on bail (pending the determination of



the proceedings for review) does not count as part of any term of imprisonment under the claimant's sentence.

- (4) The time during which an appellant receives special treatment counts as part of any term of imprisonment under the claimant's sentence. However, if the Court is satisfied that the claim was unarguable or frivolous, the Court may order that the time in custody with special treatment does not count.
- (5) In determining proceedings for judicial review, the Court may order that the imprisonment under the original sentence of imprisonment is to commence or recommence on a day specified by the Court.
- (6) Provision is to be made in regulations made under the *Crimes (Administration of Sentences) Act 1999* for:
  - (a) the manner in which a claimant, when in custody, is to be brought to any place where the claimant is entitled to be present, or ordered to be taken, for the purposes of this Act, and
  - (b) the manner in which the appellant is to be kept in custody whilst absent from prison for the purpose.
- (7) A claimant while in custody in accordance with those regulations is taken to be in legal custody.

#### **69B Other powers in relation to claimants for judicial review of convictions and sentences**

- (1) In determining proceedings for judicial review in relation to a conviction or sentence for an offence, the Court may make an order quashing either the conviction of, or the sentence imposed on, the claimant, or quash both the conviction and the sentence.
- (2) This section applies to judicial review of orders made by a Local Court or the District Court despite anything contained in the *Crimes (Local Courts Appeal and Review) Act 2001*.

#### **69C Stay of execution of conviction, order or sentence pending review**

- (1) This section and section 69D apply to proceedings in the Court for judicial review of a determination made by the District Court in appeal proceedings relating to a conviction or order made by a Local Court (or part of such a conviction or order) or sentence imposed by a Local Court.
- (2) The execution of a sentence imposed as a consequence of a conviction, or of any other order, is stayed when proceedings seeking judicial review are commenced.
- (3) Subsection (2) does not apply to a person (the **claimant**) who is in custody when proceedings seeking judicial review are commenced unless and until the claimant enters into a bail undertaking in accordance with the *Bail Act 1978*, or bail is

dispensed with.

- (4) The stay of execution continues until the proceedings for judicial review are finally determined, subject to any order or direction of the Court.
- (5) Despite subsection (2), any period during which the stay is in force is not to be taken into account when calculating the length of a period of disqualification from holding a driver licence resulting from a conviction under the road transport legislation within the meaning of the *Road Transport (General) Act 2005*.

#### **69D Court may confirm conviction or order with effect from an earlier day**

- (1) The Supreme Court may order that a conviction, order or sentence that is the subject of proceedings, or any part of it:
  - (a) is to take effect on and from a day specified in the order, or
  - (b) in the case of a sentence that has been served in part, is to recommence on and from a day specified in the order,being the day the order is made or an earlier day.
- (2) The order has effect even though a stay of execution may have been in force in respect of the sentence that is the subject of the proceedings.

#### **70 Ouster of office**

Where any person acts in an office in which the person is not entitled to act and an information in the nature of quo warranto would, but for section 12, lie against the person, the Court may grant an injunction restraining the person from so acting and may (if the case so requires) declare the office to be vacant.

#### **71 Habeas corpus**

- (1) The Court may, on an application for a writ of habeas corpus, give such judgment or make such order disposing of the proceedings as the nature of the case requires.
- (2) Where an application for a writ of habeas corpus has been made in respect of any person, no application for a writ of habeas corpus shall again be made in respect of that person on the same grounds, whether to the same Judge or to any other Judge or to the Court of Appeal, unless fresh evidence is adduced in support of the application.
- (3) Subsection (2) applies notwithstanding anything in any Act or rule of law.
- (3A) Subject to the rules, a writ of habeas corpus may be enforced in the ways in which a judgment or order of the Court may be enforced.
- (3B) Subsection (3A) does not affect the power of the Court to punish for contempt.

- (4) In this section, **writ of habeas corpus** means a writ of habeas corpus ad subjiciendum.

**71A Powers of Court in relation to warrants in respect of convictions or orders of Local Court**

- (1) In this section, **warrant** means a warrant of commitment issued in relation to a conviction or order of a Local Court.
- (2) This section has effect despite section 71.
- (3) In proceedings for a writ of habeas corpus or for the setting aside of a conviction or order of a Local Court, the Supreme Court is not to make an order for the discharge from custody of a person in custody under a warrant on the ground of any defect or error in the warrant unless the requirements of subsection (4) have been complied with.
- (4) The requirements are that the Magistrate, prosecutor or party interested in supporting the warrant:
- (a) has had notice of intention to apply for the order, and
  - (b) has been required to transmit, or has had the opportunity to transmit, to the Supreme Court the following documents, or certified copies of them:
    - (i) the conviction or order, and
    - (ii) the information (if any) and transcript of evidence intended to be relied on in support of the conviction or order.
- (5) Subject to the rules, the notice of intention to apply for the order may be given at any stage of proceedings in the Supreme Court.
- (6) The Supreme Court may dispense with the notice if copies of the conviction or order and of the transcript of evidence are produced to the Court.
- (7) The Supreme Court is to allow the warrant and the conviction or order if necessary to be amended if:
- (a) the conviction or order and transcript of evidence have been transmitted to the Supreme Court in accordance with this section, and
  - (b) the offence or matter charged or intended to have been charged appears to have been established, and
  - (c) the judgment of the Local Court appears to have been warranted in substance.
- (8) After any such amendment:
- (a) the person committed is to be remanded to the person's former custody or the

conviction or order may be enforced in the proper manner, and

(b) the conviction or order is to be treated as if it had originally stood so amended.

(9) This section does not apply to an order of the Supreme Court under Part 5 of the *Crimes (Local Courts Appeal and Review) Act 2001*.

#### **71B Person to be remanded to former custody**

The Supreme Court may remand a person who has been committed to prison by virtue of any summary conviction or order of a Local Court and has been brought up by a writ of habeas corpus to the person's former custody to serve the rest of the term for which the person was committed if the judgment of the Supreme Court is against the person.

#### **72 Production of person confined**

- (1) In this section **tribunal or authority** means any court, judge or other judicature, or any referee, arbitrator or umpire, or any person authorised to take the examination of any witness or to conduct any inquiry, whether so authorised for the purpose of proceedings in the Court or for any other purpose.
- (2) Where any prisoner or person is confined in any prison or place, under any sentence or under commitment for trial or otherwise, the Court may make orders for bringing the prisoner or person before any tribunal or authority, for the purpose of answering any charge or otherwise taking part in any proceedings or matter before the tribunal or authority, or for the purpose of being examined as a witness, and for returning the prisoner or person to confinement.

#### **73 Relief against forfeiture**

In proceedings for a forfeiture for non-payment of rent, the Court may, on terms, give relief and, if the lessee is so relieved, he or she shall hold the demised premises according to the terms of the lease, and without the necessity of any new lease.

#### **74 Discharge of lien or security**

Where, in any proceedings:

- (a) a party claims the recovery of specific property other than land, and
- (b) the party from whom recovery is sought claims to be entitled to retain the property by virtue of a lien or otherwise as security for money but does not otherwise dispute the title of the party claiming the recovery,

the Court may order:

- (c) that the party claiming the recovery be at liberty to pay into Court, to abide the event of the proceedings, the amount of money in respect of which the lien or other security is claimed and such further sum, if any, for interest and costs as the Court may direct,

and

- (d) that, upon payment into Court, such judgment be given for recovery of the property as the nature of the case may require.

## **75 Declaratory relief**

No proceedings shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.

## **75A Appeal**

- (1) Subject to subsections (2) and (3), this section applies to an appeal to the Court and to an appeal in proceedings in the Court.
- (2) This section does not apply to so much of an appeal as relates to a claim in the appeal:
- (a) for a new trial on a cause of action for debt, damages or other money or for possession of land, or for detention of goods, or
  - (b) for the setting aside of a verdict, finding, assessment or judgment on a cause of action of any of those kinds,
- being an appeal arising out of:
- (c) a trial with a jury in the Court, or
  - (d) a trial:
    - (i) with or without a jury in an action commenced before the commencement of section 4 of the *District Court (Amendment) Act 1975*, or
    - (ii) with a jury in an action commenced after the commencement of that section, in the District Court.
- (3) This section does not apply to:
- (a) an appeal to the Court under the *Crimes (Local Courts Appeal and Review) Act 2001*, or
  - (b) to a case stated under the *Criminal Appeal Act 1912*.
- (4) This section has effect subject to any Act.
- (5) Where the decision or other matter under appeal has been given after a hearing, the appeal shall be by way of rehearing.
- (6) The Court shall have the powers and duties of the court, body or other person from

whom the appeal is brought, including powers and duties concerning:

- (a) amendment,
- (b) the drawing of inferences and the making of findings of fact, and
- (c) the assessment of damages and other money sums.

- (7) The Court may receive further evidence.
- (8) Notwithstanding subsection (7), where the appeal is from a judgment after a trial or hearing on the merits, the Court shall not receive further evidence except on special grounds.
- (9) Subsection (8) does not apply to evidence concerning matters occurring after the trial or hearing.
- (10) The Court may make any finding or assessment, give any judgment, make any order or give any direction which ought to have been given or made or which the nature of the case requires.

**76-76C (Repealed)**

**Division 2**

**76D-76H (Repealed)**

**Part 6 Procedure**

**Division 1 General**

**77 Procedures under other Acts superseded**

Where, by or under any Act in force immediately before the commencement of this Act by which power is vested in the Court or in any Judge of Appeal or in any Judge or in any associate Judge or in any registrar or other officer of the Court, provision is made concerning procedure, then, notwithstanding that provision, that power shall be exercised in accordance with this Act and the rules.

**78-82 (Repealed)**

**83 Examination on oath**

Where a person is authorised by this Act or by the rules or by order of the Court to take the examination of any person:

- (a) the examination shall be taken on oath, and
- (b) the oath shall be administered by the person taking the examination or by a Judge.

## 84 Vexatious litigant

- (1) Where any person (in this subsection called the **vexatious litigant**) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings, whether in the Court or in any inferior court, and whether against the same person or against different persons, the Court may, on application by the Attorney General, order that the vexatious litigant shall not, without leave of the Court, institute any legal proceedings in any court and that any legal proceedings instituted by the vexatious litigant in any court before the making of the order shall not be continued by the vexatious litigant without leave of the Court.
- (2) Where any person (in this subsection called the **vexatious litigant**) habitually and persistently and without any reasonable ground institutes vexatious legal proceedings against any person (in this subsection called the **person aggrieved**), whether in the Court or in any inferior court, the Court may, on application by the person aggrieved, order that the vexatious litigant shall not, without leave of the Court, institute any legal proceedings against the person aggrieved in any court and that any legal proceedings instituted by the vexatious litigant against the person aggrieved in any court before the making of the order shall not be continued by the vexatious litigant without leave of the Court.
- (3) The Court may from time to time rescind or vary any order made by it under subsection (1) or subsection (2).
- (4) Where the Court has made an order under subsection (1) or subsection (2) against any person, the Court shall not give that person leave to institute or continue any proceedings unless the Court is satisfied that the proceedings are not an abuse of process and that there is prima facie ground for the proceedings.

## Division 2 Trial

### 85 Trial without jury unless jury required in interests of justice

- (1) Proceedings in any Division are to be tried without a jury, unless the Court orders otherwise.
- (2) The Court may make an order under subsection (1) that proceedings are to be tried with a jury if:
  - (a) any party to the proceedings:
    - (i) files a requisition for trial with a jury, and
    - (ii) pays the fee prescribed by the regulations made under section 18 of the *Civil Procedure Act 2005*, and
  - (b) the Court is satisfied that the interests of justice require a trial by jury in the

proceedings.

- (3) The rules may prescribe the time within which a requisition must be filed for the purposes of subsection (2) (a).
- (4) A fee paid under this section is to be treated as costs in the proceedings, unless the Court orders otherwise.
- (5) In any proceedings in which the Court has ordered a trial by jury, the following questions of fact must be tried without the jury:
  - (a) questions of fact on a defence arising under section 63 (5) or 64 (1) (c) of the *Workers' Compensation Act 1926* or section 151Z (1) (e) of the *Workers Compensation Act 1987*,
  - (b) any other question of fact ordered by the Court.
- (6) This section does not apply to proceedings in any Division for defamation.

**Note—**

Section 21 of the *Defamation Act 2005* makes provision for jury trials in defamation proceedings.

**86-89 (Repealed)**

**90 Special verdict**

It shall be the duty of a jury to answer any question of fact that may be left to the jury by the presiding Judge at the trial.

**Division 3 Judgments and orders**

**91 Judgment**

- (1) The Court is, at or after trial or otherwise as the nature of the case requires, to give such judgment or make such order as the nature of the case requires.
- (2) (Repealed)

**92-95 (Repealed)**

**96 Effect of judgment or order**

- (1) Any judgment or order of the Court for the payment of money shall have the effect of a judgment at law.
- (2), (3) (Repealed)

**97 (Repealed)**

**Division 4**

**98-100 (Repealed)**



## Part 7 Appeal to the Court of Appeal

### 101 Appeal in proceedings before the Court

- (1) Subject to this and any other Act and subject to the rules, an appeal shall lie to the Court of Appeal from:
  - (a) any judgment or order of the Court in a Division, and
  - (b) without limiting the generality of paragraph (a):
    - (i) any opinion, decision, direction or determination of the Court in a Division on a stated case,
    - (ii) any exercise of a power to which section 24 applies, and
    - (iii) any determination of the Court in a Division in proceedings remitted under subsection (4) of section 51.
- (2) An appeal shall not lie to the Court of Appeal, except by leave of the Court of Appeal, from:
  - (a) an order in proceedings in the Court directing an amendment of a judgment or order correcting a clerical mistake in the judgment or order or an error arising from an accidental slip or omission,
  - (b) (Repealed)
  - (c) a judgment given or order made in proceedings in the Court with the consent of the parties or as to costs only which are in the discretion of the Court,
  - (d) (Repealed)
  - (e) an interlocutory judgment or order in proceedings in the Court,
  - (f) a judgment or order in proceedings in the Court on an interpleader issue decided in a summary way pursuant to the rules,
  - (g) an order refusing leave for the institution or continuance of legal proceedings by a person who is the subject of an order for the time being in force under section 84,
  - (h) an order of the Court in a Division on an appeal under Part 5 of the *Crimes (Local Courts Appeal and Review) Act 2001*,
  - (i) a judgment, order or determination in proceedings in the Court under the *Commercial Arbitration Act 1984*,
  - (j), (k) (Repealed)
  - (l) a judgment or order of the Court in a Division on an application for summary

judgment under the rules,

- (m) a judgment or order of the Court on an application under section 74K, 74MA or 74O of the *Real Property Act 1900*,
  - (n) a judgment or order of the Court in a Division for the winding up of a corporation,
  - (o) a judgment or order of the Court in a Division restraining or refusing to restrain the presentation or advertisement of an application for the winding up of a corporation,
  - (p) a judgment or order of the court on an application under section 459G of the *Corporations Law* or section 459G of the *Corporations Act 2001* of the Commonwealth,
  - (q) a judgment or order in proceedings of the Court with respect to the taxation or assessment of costs, or
  - (r) a final judgment or order in proceedings of the Court, other than an appeal:
    - (i) that involves a matter at issue amounting to or of the value of \$100,000 or more, or
    - (ii) that involves (directly or indirectly) any claim, demand or question to or respecting any property or civil right amounting to or of the value of \$100,000 or more.
- (3) Subsection (2) does not apply to a judgment given or order made on an application for a writ of habeas corpus ad subjiciendum or to an order for the committal or arrest of any person.
- (4) Where the Court in a Division exercises any power to which section 24 applies and exercise of the power is expressed by any provision of an Act or Imperial Act in force immediately before the commencement of this Act to be final or without appeal, an appeal shall lie to the Court of Appeal notwithstanding that provision, but only by leave of the Court of Appeal.
- (5) An appeal lies to the Court of Appeal from any judgment or order of the Court in a Division in any proceedings that relate to contempt (whether civil or criminal) of the Court or of any other court.
- (6) Subsection (5) does not confer on any person a right to appeal from a judgment or order of the Court in a Division in any proceedings that relate to criminal contempt, being a judgment or order by which the person charged with contempt is found not to have committed contempt.

**101A Question of law concerning criminal contempt may be submitted to Court of Appeal**

- (1) At any time after the conclusion of contempt proceedings in which the alleged contemnor is found not to have committed contempt, the Attorney General may submit to the Court of Appeal any question of law arising from or in connection with the proceedings.
- (2) The Attorney General must submit with the question to be determined a statement of the circumstances out of which the question arose, and thereafter must furnish such further statement as the Court of Appeal may require.
- (3) The Court of Appeal has jurisdiction to hear and determine any question submitted to it under this section.
- (4) The determination of the Court of Appeal of the question submitted does not in any way affect or invalidate any finding or decision given in the contempt proceedings.
- (5) The alleged contemnor is entitled to be heard on the question submitted and, if it appears that the alleged contemnor does not propose to be represented, the Attorney General is to instruct an Australian legal practitioner to argue the question before the Court of Appeal on behalf of the person.
- (6) The reasonable costs of legal representation of the alleged contemnor in proceedings under this section are to be paid by the Crown.
- (7) Unless the Court orders otherwise (whether on the application of a party to the proceedings or of its own accord), proceedings under this section are to be held in camera, except that an Australian legal practitioner may be present at the proceedings for the purpose of reporting the case for any lawful purpose of the Council of Law Reporting for New South Wales.
- (8) A person:
  - (a) must not publish any report of any submission made under subsection (1), and
  - (b) must not publish any report of proceedings under this section so as to disclose the name or identity of the alleged contemnor unless the contemnor has, during the proceedings, consented to his or her name or identity being disclosed.
- (9) Any publication in contravention of subsection (8) is punishable as contempt of the Court.
- (10) In this section:

***alleged contemnor*** means the person charged with contempt in contempt proceedings.

***contempt*** means contempt of the Court or of any other court.

**contempt proceedings** means proceedings before the Court in a Division for the punishment of contempt.

(11) This section applies to criminal contempt only, and does not apply to civil contempt.

### **102 Appeal after jury trial**

Where, in any proceedings in the Court, there is a trial of the proceedings or of any issue in the proceedings with a jury, an application for:

- (a) the setting aside of a verdict or judgment,
- (b) a new trial, or
- (c) the alteration of a verdict by increasing or reducing any amount of debt, damages or other money,

shall be by appeal to the Court of Appeal.

### **103 Appeal from separate decision**

An appeal shall, by leave of the Court of Appeal, lie to the Court of Appeal from a decision in proceedings in the Court of any question or issue ordered to be decided separately from any other question or issue.

### **104 Exclusion of appeal from associate Judges and others**

Subject to the rules, an appeal shall not lie to the Court of Appeal from any decision, judgment, order, opinion, direction or determination of the Court in a Division constituted by an associate Judge, registrar or other officer.

### **105 Application of secs 106, 107**

Sections 106 and 107 apply to an appeal to the Court of Appeal where the appellant seeks a new trial or the setting aside of a verdict, finding, assessment or judgment:

- (a) after a trial with a jury in proceedings in the Court, or
- (b) after a trial:
  - (i) with or without a jury in an action commenced before the commencement of section 4 of the *District Court (Amendment) Act 1975*, or
  - (ii) with a jury in an action commenced after the commencement of that section, in the District Court.

### **106 New trial because of subsequent matters**

(1) Where, in an appeal to which this section applies, it appears to the Court of Appeal that, because of matters which have occurred since the trial, the amount of damages

awarded at the trial is manifestly too high or too low, the Court of Appeal may set aside the verdict, finding, assessment or judgment and may order a new trial on the issue of damages.

- (2) The Court of Appeal may, if satisfied that special circumstances exist which render it desirable so to do, receive evidence as to matters which have occurred since the trial and which are relevant to the exercise by the Court of Appeal of its powers under subsection (1) and may make findings of fact as to what has occurred since the trial.
- (3) The findings of fact made under subsection (2) shall not be binding on the parties except for the purposes of orders under this section or under section 107 and for the purposes of any judgment given under section 107.
- (4) The powers of the Court of Appeal under this section are in addition to its other powers to set aside a verdict, finding, assessment or judgment or to order a new trial on an issue of damages or otherwise.

### **107 Substituted verdict**

Where, in an appeal to which this section applies:

- (a) the Court of Appeal would, but for this section set aside the verdict, finding, assessment or judgment and order a new trial on an issue of the amount of debt or damages or of the value of goods,
- (b) the Court of Appeal is satisfied that:
  - (i) without seeing or hearing the plaintiff or defendant or other witnesses, or
  - (ii) without seeing or hearing the plaintiff or defendant or other witnesses further than it has seen or heard them for the purpose of receiving evidence under section 106, it is fully able to assess the amount of debt or damages or the value of the goods on perusal of the evidence contained in the documents before it and on the facts (if any) admitted and on the facts (if any) found by it under section 106, and
- (c)
  - (i) the parties consent to the exercise of the powers given by this section,
  - (ii) it appears to the Court of Appeal to be desirable to exercise the powers for the purpose of avoiding a multiplicity of trials, or
  - (iii) it appears to the Court of Appeal that, as a result of an error of law on the part of the trial judge or (where there has been a trial with a jury) a manifest error on the part of the jury, some item of debt or damages or valuation has been wrongly included in or excluded from the assessment,

the Court of Appeal may draw inferences and make findings of fact, assess the amount of

debt or damages or the value of goods in such sum as in the opinion of the Court of Appeal the debt or damages or value ought to be assessed if a new trial were had forthwith and substitute that sum for the sum awarded in the Court below and give such judgment and make such order as the nature of the case requires.

#### **108 Nonsuit or verdict after jury trial**

- (1) This section applies to an appeal to the Court of Appeal in proceedings in the Court in which there has been a trial with a jury.
- (2) Where it appears to the Court of Appeal that on the evidence given at the trial a verdict for the plaintiff could not be supported and that, pursuant to any provision of the rules, an order ought to have been made for the dismissal of the proceedings either wholly or so far as concerns any cause of action in the proceedings, the Court of Appeal may make an order of dismissal accordingly.
- (3) Where it appears to the Court of Appeal that upon the evidence the plaintiff or the defendant is, as a matter of law, entitled to a verdict in the proceedings or on any cause of action, issue or claim for relief in the proceedings, the Court of Appeal may direct a verdict and give judgment accordingly.

#### **109 Effect of minor variations to judgments, orders or injunctions appealed against**

If:

- (a) a Judge of Appeal or the Court of Appeal dismisses an appeal against a judgment, order or injunction, and
- (b) at that time, the Judge or Court makes a judgment or order that involves the variation of the judgment, order or injunction the subject of the appeal, and
- (c) the Judge or Court declares the variation to be a minor variation,

the varied judgment, order or injunction is, for all purposes, taken to be a judgment, order or injunction of the court, tribunal or Division that made the original judgment, order or injunction the subject of the appeal.

#### **110 Disqualification of Judge of Appeal**

- (1) A Judge of Appeal, or a Judge appointed or nominated under section 36 to act as an additional Judge of Appeal, shall not sit on the hearing of an appeal from a judgment given or an order made by himself or herself.
- (2) Subsection (1) does not apply to a judgment given or order made pro forma by consent of the parties.

### **Parts 7A, 7B**

#### **110A-110S (Repealed)**

## **Part 8 Associate Judges and officers**

### **Division 1 Associate Judges**

#### **111 Appointment of associate Judges and acting associate Judges**

- (1) The Governor may appoint one or more associate Judges.
- (2) The Governor may appoint one or more acting associate Judges.
- (3) Each person so appointed is to be a person who:
  - (a) holds or has held a judicial office of this State or of the Commonwealth, another State or a Territory, or
  - (b) is an Australian lawyer of at least 5 years' standing.
- (4) (Repealed)
- (5) A registrar may, if qualified in accordance with subsections (3) and (4), be appointed an acting associate Judge and, if so appointed, may retain his or her office as registrar.
- (6) A retired associate Judge may be appointed under subsection (2) as an acting associate Judge even though the retired associate Judge has reached the age of 72 years (or will have reached that age before the appointment expires), but may not be so appointed for any period that extends beyond the day on which he or she reaches the age of 75 years.

#### **112 Terms of appointment**

- (1) The appointment of a person to the office of associate Judge or acting associate Judge shall, subject to this Division, be on such terms and conditions (except as to remuneration or pension) as may be specified in the instrument of the person's appointment or as may be agreed by the Governor and the officer.
- (2) An associate Judge or acting associate Judge is entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the associate Judge or acting associate Judge.

#### **113 Public Sector Employment and Management Act 2002**

- (1) The *Public Sector Employment and Management Act 2002* does not apply to an associate Judge.
- (2) Despite subsection (1), if the *Public Sector Employment and Management Act 2002*

applies to a person immediately before the person's appointment as associate Judge, the person is entitled to receive any deferred or extended leave and any privileges as if the person had remained an officer within the meaning of that Act.

- (3) The *Public Sector Employment and Management Act 2002* does not apply to an acting associate Judge unless that Act applies to the acting associate Judge immediately before his or her appointment as acting associate Judge.

#### **114 Superannuation Act 1916**

- (1) The *Superannuation Act 1916* shall not apply to an associate Judge.
- (2) Where an associate Judge is at the time of the associate Judge's appointment as associate Judge a contributor or pensioner under the *Superannuation Act 1916*:
- (a) there shall be paid to the associate Judge out of the State Superannuation Fund a sum equal to the contributions paid by the associate Judge to the fund after deducting the sum of any payments to the associate Judge of pension under that Act, but without interest, and
  - (b) the associate Judge shall not, nor shall any spouse or child of the associate Judge's, be entitled to receive any other payment or pension under that Act.
- (3) The *Superannuation Act 1916* shall not apply to an acting associate Judge unless that Act applies to the acting associate Judge immediately before the acting associate Judge's appointment as acting associate Judge.

#### **115 Resignation and tenure of associate Judges and acting associate Judges**

- (1) An associate Judge or an acting associate Judge may:
- (a) resign from office by instrument in writing, or
  - (b) (Repealed)
- (2) (Repealed)
- (3) An acting associate Judge shall, subject to subsection (1), hold office for such term as the Governor may specify in the instrument of the acting associate Judge's appointment.
- (4) Except as provided by section 111 (6), the term for which an acting associate Judge holds office shall not extend beyond the day on which the associate Judge reaches the age of 72 years.

#### **116 Assignment**

The Governor may:

- (a) assign an associate Judge or an acting associate Judge:



- (i) to the Court of Appeal,
  - (ii) to the Court of Appeal and any one or more Divisions, or
  - (iii) to any one or more Divisions, and
- (b) revoke an assignment of an associate Judge or acting associate Judge to the Court of Appeal or to any Division.

### **117 Seniority**

Where two or more associate Judges are assigned to the Court of Appeal or to any Division, they shall, subject to the terms of any instrument of assignment, have seniority amongst themselves in accordance with the order of their assignments to the Court of Appeal or to that Division, as the case may be.

### **117A Powers: associate Judge in Court of Appeal**

- (1) In this section, ***associate Judge in the Court of Appeal*** means an associate Judge or acting associate Judge assigned to the Court of Appeal or an associate Judge or acting associate Judge directed by the Chief Justice to act in the Court of Appeal.
- (2) An associate Judge in the Court of Appeal may exercise such powers of the Court of Appeal (and only such powers) as are exercisable by a Judge of Appeal under section 46 and are, by or under this or any other Act, conferred upon an associate Judge assigned to the Court of Appeal.
- (3) A judgment given or an order made by an associate Judge in the Court of Appeal may be discharged or varied by the Court of Appeal.
- (4) Subject to subsection (3), a judgment given or an order made or direction given by an associate Judge in the Court of Appeal shall have effect as a judgment or order or direction of the Court of Appeal, whether or not the judgment, order or direction is within the powers mentioned in this section of an associate Judge in the Court of Appeal.
- (5) An associate Judge in the Court of Appeal shall constitute the Court of Appeal for the purpose of the exercise of the powers mentioned in subsection (2).

### **118 Powers: divisional associate Judge**

- (1) In this section, ***divisional associate Judge*** means, in relation to any Division, an associate Judge or acting associate Judge assigned to the Division or an associate Judge or acting associate Judge directed by the Chief Justice to act in the Division.
- (2) A divisional associate Judge may exercise such powers of the Court in the Division (and only such powers) as are, by or under this or any other Act, conferred upon an associate Judge assigned to the Division.

- (3) A judgment given or an order made by a divisional associate Judge in any Division may be set aside or varied by the Court.
- (4) Subject to subsection (3), a judgment given or an order made or direction given by a divisional associate Judge in any Division shall have effect as a judgment or order or direction of the Court in the Division, whether or not the judgment, order or direction is within the powers mentioned in this section of the divisional associate Judge.
- (5) A divisional associate Judge in any Division shall constitute the Court in that Division for the purpose of the exercise of the powers mentioned in subsection (2).

## **Division 2 Registrars and other officers**

### **119 Offices of registrars**

- (1) There are such registrars as may be appointed from time to time, including a Principal Registrar of the Court, a Registrar of the Court of Appeal, and a Registrar of each Division.
- (2) The registrar of the Common Law Division shall be called the Prothonotary.
- (3) Notwithstanding the provisions of any other Act, a registrar may exercise the powers of any other registrar if and so far as he or she is authorised to do so by the rules, and, when so doing, he or she shall be deemed to be that other registrar.

### **120 Appointment**

The following persons may be employed under Chapter 2 of the [Public Sector Employment and Management Act 2002](#):

- (a) persons to fill the offices mentioned in section 119,
- (b) persons to act temporarily in any of those offices,
- (c) persons to be deputies of any of those officers (whether designated as deputies, assistants or otherwise),
- (d) such other officers as may be necessary for carrying out the provisions of this Act and the rules and any other Act, regulations or rules relating to the Court.

### **120A Exercise of powers of registrar and deputy registrar by other officers**

- (1A) The registrar of the Court of Criminal Appeal may, subject to the rules, exercise the powers of a registrar of the Supreme Court and, when exercising those powers, is taken to be a registrar of the Supreme Court.
- (1B) An officer of the Court of Criminal Appeal may, subject to the rules, exercise the powers of an officer of the Supreme Court and, when exercising those powers, is taken to be an officer of the Supreme Court.

- (1) The Chief Justice may, by order in writing, authorise a particular court officer, or a court officer of a particular class, to exercise the powers of deputy registrar of the Supreme Court.
- (2) A court officer so authorised may exercise the powers conferred on a deputy registrar of the Court by or under this Act and, when exercising those powers, is taken to be a deputy registrar of the Court.
- (3) A court officer so authorised may also exercise the powers conferred on a registrar of the Court by or under this Act or the *Criminal Appeal Act 1912*, if he or she is authorised to do so by the Chief Justice by the order referred to in subsection (1) or by further order in writing.

**Note—**

The *Criminal Appeal Act 1912* confers power on a registrar of the Court to exercise the powers conferred on a registrar of the Court of Criminal Appeal.

- (4) In this section:

**court officer** means:

- (a) an officer of the Supreme Court, or
- (b) a registrar of a Local Court or a member of staff of the Attorney General's Department employed in a Local Court.

## **121 Powers**

- (1) In this section **officer** means a registrar, taxing officer, or other officer of the Court.
- (2) An officer may exercise such powers of the Court as are, by or under this or any other Act, conferred upon the officer.
- (3) A judgment given or an order made by an officer may be set aside or varied by the Court.
- (4) Subject to subsection (3), a judgment given or an order made or direction given by an officer shall have effect as a judgment or order or direction of the Court, whether or not the judgment, order or direction is within the powers mentioned in this section of the officer.
- (5) An officer shall constitute the Court for the purpose of the exercise of the powers mentioned in subsection (2).

## **Part 9 Rules of Court**

### **122 Rules taken to have effect as rules made by the Rule Committee**

- (1) The rules in the Fourth Schedule shall come into operation on the commencement of

this Act, but subject to and together with rules made by the Rule Committee.

- (2) Upon the expiry of six months after the commencement of this Act, or on such earlier date as may be appointed by the Governor and notified by proclamation published in the Gazette, the Fourth Schedule to this Act shall, by force of this subsection, be repealed.
- (3) On and after the repeal to be effected by subsection (2) the rules in the Fourth Schedule shall have effect as rules made by the Rule Committee, but subject to and together with rules made by the Rule Committee.

**Note—**

A proclamation was not published under subsection (2). Therefore, the Fourth Schedule was repealed on 1 January 1973 (six months after the commencement of this Act).

### **123 Rule Committee**

- (1) Rules may be made under this Act by a Rule Committee consisting of:
  - (a) the Chief Justice,
  - (b) the President of the Court of Appeal or a Judge of Appeal appointed on the nomination of the President of the Court of Appeal,
  - (c) one other appointed Judge of Appeal,
  - (d) four other appointed judges, and
  - (e) an appointed barrister and an appointed solicitor.
- (2) In this section, **appointed** means appointed to the Rule Committee by the Chief Justice by instrument in writing.
- (2A) In this section and in section 123A:

**barrister** has the same meaning as in the [Legal Profession Act 2004](#).

**solicitor** has the same meaning as in the [Legal Profession Act 2004](#).
- (3) A person appointed shall hold office for the time specified in the appointment but may resign by instrument in writing addressed to the Chief Justice.
- (4) At a meeting of the Rule Committee the chairman shall be:
  - (a) the Chief Justice, if the Chief Justice is present,
  - (b) if the Chief Justice is not present but the President of the Court of Appeal is a member of the Rule Committee and is present, the President of the Court of Appeal, or

- (c) in the absence of the Chief Justice and the President of the Court of Appeal, one of the members present, chosen by the meeting.
- (5) In case of equality of voting, the chairman shall have a casting as well as a deliberative vote.
- (6) Any four members of the Rule Committee shall constitute a quorum.
- (7) There shall be a secretary of the Rule Committee who shall be a person approved by the Chief Justice.
- (8) Subject to this section, the Rule Committee may regulate its own procedure.
- (9) The Rule Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Rule Committee for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Rule Committee.
- (10) A person who, as a purported member, attended a meeting of the Rule Committee held on or after 1 July 2005 and before 1 July 2007 is taken to have been a duly appointed member of the Rule Committee during that time and accordingly any rule that was purportedly made by the Rule Committee during that time is taken to have been duly made.

**123A Deputies for barrister and solicitor members**

- (1) The Chief Justice may, from time to time, appoint to the Rule Committee:
- (a) a barrister to be the deputy of the barrister member appointed under section 123 (1) (e), and
- (b) a solicitor to be the deputy of the solicitor member appointed under section 123 (1) (e),
- and the Chief Justice may revoke any such appointment.
- (2) In the absence of a member appointed under section 123 (1) (e), the member's deputy:
- (a) may, if available, act in the place of the member, and
- (b) while so acting, has the functions of the member and is taken to be the member.

**124 Rule-making power**

- (1) Any rules may be altered or added to or rescinded, and any further or additional rules may be made, by the Rule Committee for the purpose of carrying this Act into effect and, without limiting the generality of the foregoing, for the following purposes:

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court in all proceedings in, or with respect to which, the Court has for the time being jurisdiction (including the procedure and practice to be followed in the offices of the Court), and any matters incidental to, or relating to, any such procedure or practice, including the manner and time of making any applications which under this or any other Act, or under any Imperial Act or Commonwealth Act, are to be made to the Court,
- (b) for regulating and prescribing the form and contents of any case stated to the Court by or from any court or person and the time within which and the manner in which proceedings thereon are to be instituted in the Court and the practice and procedure thereafter to be followed in the Court and the notification of the decision of the Court,
- (c) for regulating and prescribing the practice and procedure to be followed in connection with the institution of any appeal from any inferior court or from any person to the Court, including the time within which, and the manner in which, the appeal is to be instituted, and the practice and procedure thereafter to be followed in the Court,
- (d) for regulating and prescribing the practice and procedure to be followed in connection with the transfer of any proceedings from any inferior court to the Court or from the Court to any inferior court, and for the co-ordination or expedition of any such transfers, and, where proceedings are transferred to the Court, the practice and procedure thereafter to be followed in the Court,
- (e) for regulating and prescribing any matter which, under any Act or Imperial Act, may be regulated or prescribed by rules of the Court or by rules made by the Judges or any Judges or the Chief Judge in Equity or any other Judge identified by description of his or her office or the Judges of Appeal or any Judges of Appeal,
- (f) for altering, adding to or rescinding any rules in force immediately before the commencement of this Act, which regulate or prescribe any matter which, under any Act or Imperial Act, might, immediately before the commencement of this Act, be regulated or prescribed by rules of the Court or by rules made by the Judges or any Judges or the Chief Judge in Equity or any other Judge identified by description of his or her office or the Judges of Appeal or any Judges of Appeal,
- (g) for providing for the regulation of the sittings and order of business of the Court and the regulation of the vacations and holidays to be observed by the Court and in the offices of the Court,
- (h) for prescribing what powers of the Court may be exercised by any of the associate Judges, acting associate Judges, registrars and other officers of the Court,
- (i) (Repealed)

- (j) for regulating any matters relating to the costs of proceedings in the Court and, in particular, prescribing, limiting or otherwise affecting the costs recoverable in any action or proceedings that the Court considers might properly have been dealt with in an inferior court,
  - (k), (ka) (Repealed)
  - (l) for prescribing means for, and the practice and procedure to be followed in, the enforcement and execution of judgments and orders,
  - (m) for regulating the means by which particular facts may be proved, and the mode in which evidence may be given (including the administration of oaths to and the taking of the evidence of witnesses in or out of New South Wales), in any proceedings, or on any application in connection with, or at any stage of, any proceedings,
  - (ma) for prescribing matters relating to expert evidence, including the disclosure, by the furnishing of copies of reports or otherwise, of the nature of expert evidence to be given, and including the exclusion of expert evidence in case of non-compliance with the rules relating to expert evidence or with any order for disclosure of the nature of expert evidence,
  - (n) for prescribing the cases in which security may be required, and the form of such security, and the manner in which, and the person to whom, it is to be given,
  - (o) for regulating and prescribing any matter concerning or in relation to which provision was made by the rules set out in the Fourth Schedule to this Act when it commenced,
  - (p), (q) (Repealed)
  - (r) for regulating the payment or transfer into or out of Court and, subject to the consent of the Treasurer, the custody, management and investment of moneys, securities and effects, and
  - (s) for prescribing and regulating the duties of the associate Judges, acting associate Judges, registrars and other officers of the Court in relation to or for the purpose of any proceedings.
  - (t) (Repealed)
- (2) The rules may make provision for or with respect to:
- (a) the cases in which the whole of any proceedings or any question or issue arising in any proceedings may be referred by the Court to an arbitrator or referee for determination or for inquiry and report,
  - (b) the appointment of a Judge, associate Judge, registrar or other officer of the Court

- or other person as an arbitrator or referee,
- (c) the fees to be paid to such an arbitrator or referee,
  - (d) the persons by whom the whole or any part of any such fees are payable,
  - (e) the consequences of a determination or report by an arbitrator or referee,
  - (f) the manner in which such a determination or report may be called in question,
  - (g) whether or not, or to what extent, a determination or report may be called in question on a matter of fact or law,
  - (h) the provision of the services of officers of the Court and the provision of court rooms and other facilities for the purpose of a reference of any proceedings or any question or issue arising in any proceedings to an arbitrator or referee, and
  - (i) any other matters associated with such a reference.
- (3) The rules may make provision for or with respect to the assignment of proceedings to the Court of Appeal or a Division. The assignment by the rules of any proceedings to the Court of Appeal or any Division has effect despite any contrary provision of this or any other Act or law.
- (4) The rules may authorise an associate Judge to punish contempt in the face of the Court or in the hearing of the Court where the Court is constituted by that associate Judge and to punish the breach of an undertaking given to the Court constituted by that associate Judge, but otherwise the rules shall not authorise an associate Judge, registrar or other officer to make an order for the committal, attachment or arrest of any person.
- (5) Where the rules rescind a rule by which a previous rule was rescinded, then, unless the contrary intention appears, the previous rule shall not be revived.
- (6) Where the rules rescind or amend a previous rule, then, unless the contrary intention appears, the rescission or amendment shall not revive anything not in force or existing immediately before the rescission or amendment takes effect.
- (7) After the commencement of this Act no power by any Act or Imperial Act conferred upon the Judges or any Judge or the Chief Judge in Equity or any other Judge identified by description of his or her office or the Judges of Appeal or any Judges of Appeal to make rules as to any matter shall be exercised otherwise than by the Rule Committee making in respect of that matter rules under and in accordance with this Act.
- (8) Rules made by the Rule Committee under this Act shall, so far as inconsistent with rules made (whether before or after the commencement of this Act) under any other Act or under any Imperial Act, prevail over the latter rules while the inconsistency exists.



- (9) This section does not give power to make rules with respect to any matter with respect to which rules may be made under section 28 or 38 (4) of the [Legal Profession Act 2004](#).
- (10) This section does not give power to make rules with respect to any matter relating to costs that is regulated by Part 3.2 of the [Legal Profession Act 2004](#).
- (10A) This section does not give power to make rules in terms inconsistent with those of the uniform rules under the [Civil Procedure Act 2005](#) unless the uniform rules expressly permit rules under this section to be made in those terms.
- (10B) The rules made under this section may authorise or require the use of an electronic case management system established under section 14B of the [Electronic Transactions Act 2000](#) in relation to any proceedings in a court in respect of which the use of such a system is authorised by an order in force under section 14C of that Act.
- (10C) The rules made under this section may provide for the exercise by a registrar or other officer of the Court of any of the Court's administrative or judicial functions under this or any other Act and for the review by the Court of the exercise by a registrar or other such officer of any such function.
- (11) A practice note (including any other document, however described, which regulates the practice or procedure of the Court, any Division of the Court or of any class of proceedings in the Court, but excluding a decision of the Court) issued by or on behalf of the Court is taken to be a statutory rule for the purposes of Part 6 of the [Interpretation Act 1987](#). This subsection does not apply to a practice note issued before the commencement of this subsection, but extends to a practice note so issued if it commences on or after 19 November 1993 (whether or not published in the Gazette).

## **125-128 (Repealed)**

## **Part 10 Supplemental**

### **129 Savings and transitional provisions**

The Fourth Schedule has effect.

### **130 Fees and percentages**

The Governor may make regulations fixing or otherwise relating to fees and percentages to be taken in respect of the business of the Court.

## **First Schedule Repeal of Acts**

(Section 5)

<b>Reference to Act</b>	<b>Subject</b>	<b>Extent of repeal</b>
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No 21, 1899	Common Law Procedure	The unrepealed portion
No 35, 1900	Supreme Court and Circuit Courts	The unrepealed portion
No 49, 1900	Supreme Court Procedure	The unrepealed portion
No 7, 1901	Interpleader	The whole
No 24, 1901	Equity	The unrepealed portion
No 42, 1901	Negotiable Instruments Procedure	The whole
No 44, 1901	Prohibition and Mandamus	The whole
No 24, 1902	Arrest on Mesne Process	The unrepealed portion
No 34, 1902	General Legal Procedure	The unrepealed portion
No 19, 1903	Commercial Causes	The whole
No 6, 1904	Legal Process Facilitation	The whole
No 14, 1906	Administration Amending	Section 2
No 27, 1906	Judges' Pensions Amendment	The unrepealed portion
No 9, 1912	Supreme Court and Circuit Courts (Amendment)	The unrepealed portion
No 19, 1913	Public Trustee	Paragraph (b) of section 60
No 3, 1921	Real Property (Amendment)	Subsections (1) and (2) of section 10
No 15, 1925	Administration of Justice	Subsection (2) of section 2
No 9, 1927	Supreme Court and Circuit Courts (Amendment)	The whole
No 7, 1928	Supreme Court and District Courts (Judges)	Sections 2 and 3
No 49, 1930	Landlord and Tenant Amendment (Distress Abolition)	Paragraph (c) of section 3
No 49, 1932	Wills, Probate and Administration (Amendment)	Sections 3 and 4
No 14, 1935	Supreme Court and Circuit Courts (Prothonotary) Amendment	Sections 2 and 3
No 35, 1937	Statute Law Revision	So much of Second Schedule as amends Acts No 21, 1899, No 7, 1901 and No 24, 1901
No 30, 1938	Conveyancing, Trustee and Probate (Amendment)	Paragraphs (i) and (k) of section 6
No 44, 1940	Attachment of Wages Limitation	Subsection (1) of section 2
No 37, 1941	Supreme Court and Circuit Courts (Amendment)	Subsection (2) of section 1 and section 2

No 22, 1948	Supreme Court and Circuit Courts (Prothonotary) Amendment	Subsection (1) of section 2 and section 3
No 18, 1954	Supreme Court, Industrial Arbitration and Workers' Compensation (Amendment)	Subsection (2) of section 1 and section 2
No 40, 1954	Administration of Estates	Paragraphs (b), (c), (d), (f) and (l) of section 3
No 13, 1957	Supreme Court Procedure	Sections 3, 4, 5, paragraphs (d), (e) and (h) of section 6, sections 7 and 9, subsection (1) of section 14 and so much of First Schedule as amends Acts No 21, 1899, No 35, 1900, No 49, 1900, No 24, 1902 and No 29, 1902
No 10, 1958	Common Law Procedure and Landlord and Tenant (Amendment)	Subsection (2) of section 1 and section 2
No 55, 1960	Landlord and Tenant (Amendment)	Paragraph (a) of subsection (1) of section 2
No 29, 1961	Industrial Arbitration (Basic Wage) Amendment	So much of First Schedule as amends Act No 21, 1899, and so much of Second Schedule as refers to Act No 21, 1899
No 1, 1962	Common Law Procedure (Amendment)	The whole
No 37, 1964	Industrial Arbitration (Amendment)	So much of First Schedule as amends Act No 21, 1899, and so much of Second Schedule as refers to Act No 21, 1899
No 52, 1964	Judges' Pensions and Equity (Amendment)	Subsection (3) of section 1 and section 3
No 12, 1965	Supreme Court and Circuit Courts (Amendment)	Sections 2, 3, 4, paragraphs (a), (c), (d) and (g) of subsection (1) of section 5, subsection (2) of section 5, sections 6, 7, 12 and 15 and so much of Schedule as refers to Acts No 35, 1900, No 49, 1900, No 24, 1901, No 19, 1903 and No 42, 1924
No 11, 1967	Common Law Procedure and Supreme Court and Circuit Courts (Amendment)	The whole
No 29, 1967	Legal Practitioners (Amendment)	Paragraph (b) of section 5 and so much of section 9 as amends Act No 22, 1898, by inserting sections 65J and 65R

No 86, 1967	Industrial Arbitration (Basic Wage) Amendment	So much of First Schedule as amends the <a href="#">Common Law Procedure Act 1899</a> , and so much of Second Schedule as refers to the <a href="#">Common Law Procedure Act 1899</a>
No 58, 1968	Landlord and Tenant (Amendment)	Section 8
No 4, 1969	Judges' Pensions and Equity (Amendment)	Subsection (3) of section 1 and section 3
No 5, 1969	Supreme Court and Circuit Courts (Amendment)	The whole
No 30, 1969	Imperial Acts Application	Section 42

## Second Schedule (Repealed)

### Third Schedule Criminal proceedings

(Section 17 (1))

- (a) Proceedings in the Court for the prosecution of offenders on indictment (**indictment** including any information presented or filed as provided by law for the prosecution of offenders) including the sentencing or otherwise dealing with persons convicted,
- (a1) proceedings (including committal proceedings) for the prosecution of offenders on indictment (**indictment** including any information presented or filed as provided by law for the prosecution of offenders) in the Court or in the District Court,
- (a2) proceedings (whether in the Court or the District Court) under Division 5 of Part 2 of Chapter 3 of the [Criminal Procedure Act 1986](#),
- (b) gaol delivery,
- (c) proceedings in the Court under the [Crimes Act 1900](#), other than proceedings under section 88 of that Act and applications for leave to institute prosecutions under section 172 of that Act,
- (d) proceedings in the Court under the [Criminal Appeal Act of 1912](#),
- (e) proceedings in the Court under subsection (1) of section 11 of the [Inebriates Act 1912](#), or for the making of an order pursuant to section 16 of that Act,
- (f) proceedings in the Court under Part 2 of the [Children \(Criminal Proceedings\) Act 1987](#),
- (g) proceedings in the Court under the [Habitual Criminals Act 1957](#),
- (h) proceedings in the Court under section 23 or section 26 of the [Mental Health Act 1958](#),
- (i) proceedings in the Court for the grant of a certificate under the [Costs in Criminal Cases Act 1967](#).
- (j), (k) **(Repealed)**

## Fourth Schedule Savings and transitional provisions

(Section 129)

### Part 1 General

#### 1 Regulations

- (1) The Governor may make regulations for the purposes of this Part.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Courts Legislation Further Amendment Act 1998*, but only in relation to the amendments made to this Act

*Courts Legislation Amendment Act 2000*, but only in relation to the amendments made to this Act

*Courts Legislation Amendment (Civil Juries) Act 2001*, but only in relation to the amendments made to this Act

*Courts Legislation Amendment Act 2003*, but only in relation to the amendments made to this Act

*Courts Legislation Amendment Act 2005*

- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of **Supreme Court (Amendment) Act 1994**

#### 1A **Supreme Court (Amendment) Act 1994**

- (1) The amendment made to this Act by Schedule 1 (2) to the *Supreme Court (Amendment) Act 1994* applies to proceedings for judgment in the Court of Appeal whether the proceedings were commenced before, on or after the commencement of

the amendment.

- (2) The amendment made to this Act by Schedule 1 (3) to the *Supreme Court (Amendment) Act 1994* applies to any proceeding whether commenced before, on or after the commencement of the amendment, but not to proceedings commenced to be heard by the Court of Appeal before the commencement of the amendment.

### **Part 3 Provisions consequent on enactment of *Courts Legislation Further Amendment Act 1995***

#### **2 *Courts Legislation Further Amendment Act 1995***

The amendments made to section 101 (2) by the *Courts Legislation Further Amendment Act 1995* do not operate to require leave to appeal against a judgment or order of the Court if, when the judgment or order was made, an appeal lay as of right.

### **Part 4 Provisions consequent on enactment of *Courts Legislation Amendment Act 1996***

#### **3 *Courts Legislation Amendment Act 1996***

- (1) Proceedings commenced in the Court before the commencement of items [4], [5], [6], [7] and [10] of Schedule 1.8 to the *Courts Legislation Amendment Act 1996* are unaffected by the amendments to this Act that are made by those items.
- (2) Proceedings commenced in the Court before the commencement of item [8] of Schedule 1.8 to the *Courts Legislation Amendment Act 1996* are unaffected by the amendment to this Act that is made by that item.

### **Part 5 Provisions consequent on enactment of *Courts Legislation Amendment Act 1997***

#### **4 *Courts Legislation Amendment Act 1997***

- (1) Section 46A, as amended by the *Courts Legislation Amendment Act 1997*, applies to awards of compensation made by the Compensation Court before the commencement of Schedule 5 [1] to that Act in the same way as it applies to awards of compensation made after that commencement.
- (2) Section 101, as amended by the *Courts Legislation Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 5 [2] to that Act in the same way as it applies to judgments and orders given or made after that commencement.

### **Part 6 Provisions consequent on enactment of *Traffic Legislation***

## Amendment Act 1997

### 5 Traffic Legislation Amendment Act 1997

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Traffic Legislation Amendment Act 1997* (but only in relation to the amendments made to this Act).
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## Part 7 Provisions consequent on enactment of Courts Legislation Further Amendment Act 1997

### 6 Courts Legislation Further Amendment Act 1997

- (1) Section 46A, as amended by the *Courts Legislation Further Amendment Act 1997*, applies to awards of compensation made by the Compensation Court before the commencement of Schedule 1.11 [1] to that Act in the same way as it applies to awards of compensation made after that commencement.
- (2) Section 101, as amended by the *Courts Legislation Further Amendment Act 1997*, applies to judgments and orders given or made before the commencement of Schedule 1.11 [2] to that Act in the same way as it applies to judgments and orders given or made after that commencement.

## Part 8 Provisions consequent on enactment of Courts Legislation Further Amendment Act 1998

### 7 Definitions

- (1) In this Part:

**abolished Division** means a Division of the Court abolished by clause 8.

**amending Act** means the *Courts Legislation Further Amendment Act 1998*.

- (2) A reference in this Part to proceedings being assigned to a Division is a reference to the proceedings being assigned to that Division by or under this or any other Act.

### **8 Abolition of certain Divisions**

On the commencement of Schedule 10 [2] to the amending Act, the following Divisions of the Court (within the meaning of this Act as in force immediately before that commencement) are abolished:

- (a) the Administrative Law Division,
- (b) the Admiralty Division,
- (c) the Commercial Division,
- (d) the Criminal Division,
- (e) the Family Law Division,
- (f) the Probate Division,
- (g) the Protective Division.

### **9 Assignment of proceedings and Judges in abolished Divisions to Common Law Division**

- (1) The following proceedings are assigned to the Common Law Division on the commencement of Schedule 10 [2] to the amending Act:
- (a) any proceedings that were assigned to the Administrative Law Division by or under this or any other Act immediately before that commencement,
  - (b) any proceedings that were assigned to the Criminal Division by or under this or any other Act immediately before that commencement.
- (2) If proceedings are pending in an abolished Division referred to in subclause (1) immediately before its abolition, the proceedings are taken for all purposes to have been commenced in the Common Law Division.
- (3) Subject to subclause (4), a Judge who, immediately before the abolition of an abolished Division referred to in subclause (1), was appointed or nominated to the Division under this or any other Act is taken for the purposes of this Act to have been appointed or nominated to the Common Law Division.
- (4) A Judge who, immediately before the commencement of Schedule 10 [1] to the amending Act, held office under section 28 of this Act (as in force immediately before that commencement) as the Chief Judge at Common Law is taken to hold office as Chief Judge at Common Law under section 27 (as inserted by the amending Act).



## **10 Assignment of proceedings and Judges in abolished Divisions to Equity Division**

- (1) The following proceedings are assigned to the Equity Division on the commencement of Schedule 10 [2] to the amending Act:
  - (a) any proceedings that were assigned to the Admiralty Division by or under this or any other Act immediately before that commencement,
  - (b) any proceedings that were assigned to the Commercial Division by or under this or any other Act immediately before that commencement,
  - (c) any proceedings that were assigned to the Family Law Division by or under this or any other Act immediately before that commencement,
  - (d) any proceedings that were assigned to the Probate Division by or under this or any other Act immediately before that commencement,
  - (e) any proceedings that were assigned to the Protective Division by or under this or any other Act immediately before that commencement.
- (2) If proceedings are pending in an abolished Division referred to in subclause (1) immediately before its abolition, the proceedings are taken for all purposes to have been commenced in the Equity Division.
- (3) Subject to subclause (4), a Judge who, immediately before the abolition of an abolished Division referred to in subclause (1), was appointed or nominated under this or any other Act to the Division is taken for the purposes of this Act to have been appointed or nominated to the Equity Division.
- (4) A Judge who, immediately before the commencement of Schedule 10 [1] to the amending Act, held office under section 28 of this Act (as in force immediately before that commencement) as the Chief Judge in Equity is taken to hold office as Chief Judge in Equity under section 27 (as inserted by the amending Act).

## **11 Existing Probate Judge**

A Judge who, immediately before the abolition of the Probate Division, held office as Probate Judge under section 28 of this Act (as in force immediately before that abolition) retains the rank, title, status and precedence he or she had immediately before that abolition.

## **12 References to abolished Divisions**

- (1) A reference in another Act (other than the amending Act), in an instrument made under an Act or in any other document to an abolished Division is to be read as a reference to the corresponding Division for the abolished Division.
- (2) In this clause, ***corresponding Division*** for an abolished Division means:

- (a) in relation to the Administrative Law Division or the Criminal Division—the Common Law Division, or
- (b) in relation to the Admiralty Division, the Commercial Division, the Family Law Division, the Probate Division or the Protective Division—the Equity Division.

### **13 Nothing in Part affects certain powers and other matters**

Nothing in this Part affects:

- (a) the operation of section 124 (3) of this Act, or
- (b) the rank, title, status and precedence of any Judge of the Court who, immediately before the commencement of this clause, had that rank, title, status and precedence.

## **Part 9 Provisions consequent on enactment of [Courts Legislation Amendment Act 1999](#)**

### **14 Application of amendment**

Section 45AA (as inserted by the [Courts Legislation Amendment Act 1999](#)) applies to appeal proceedings in the Court of Appeal whether the proceedings were commenced before or after the commencement of the amendment.

## **Part 10 Provisions consequent on enactment of [Courts Legislation Amendment Act 2000](#)**

### **15 Definition**

In this Part, **amending Act** means the [Courts Legislation Amendment Act 2000](#).

### **16 Application of amendment relating to appeals**

Section 46A, as amended by the amending Act, extends to an appeal against an order made before the commencement of the amendment to that section.

### **17 Application of amendment relating to contempt proceedings**

Section 101A, as amended by the amending Act, extends to proceedings that were commenced before the commencement of the amendment.

## **Part 11 Provisions consequent on enactment of [Supreme Court Amendment \(Referral of Proceedings\) Act 2000](#)**

### **18 Application of amendment**

- (1) Section 76B and Part 7B, as amended by the [Supreme Court Amendment \(Referral of Proceedings\) Act 2000](#), extend to proceedings instituted before the amendments took effect, except as provided by subclause (2).

- (2) The amendments made by that Act to Part 7B have no effect in relation to a matter that, at the time the amendments took effect, had already been referred for mediation or neutral evaluation under that Part.

## **Part 12 Provision consequent on enactment of [Courts Legislation Amendment \(Civil Juries\) Act 2001](#)**

### **19 Application of amendment**

Section 85, 86, 87, 88 or 89, as in force immediately before its amendment by the [Courts Legislation Amendment \(Civil Juries\) Act 2001](#), continues to apply in relation to proceedings commenced but not finally determined before the commencement of that amendment as if the section had not been amended.

## **Part 13 Provision consequent on enactment of [Courts Legislation Further Amendment Act 2002](#)**

### **20 Arbitration**

The amendment made by Schedule 6 [1] to the [Courts Legislation Further Amendment Act 2002](#) extends to proceedings commenced, but not determined, before the commencement of the amendment.

## **Part 14 Provision consequent on enactment of [Courts Legislation Amendment Act 2003](#)**

### **21 Application of amendments**

- (1) Except as provided by subclause (2), an amendment made to this Act by Schedule 8 to the [Courts Legislation Amendment Act 2003](#) extends to matters arising in proceedings commenced before the commencement of that amendment.
- (2) The provisions of Part 7B, as in force immediately before the commencement of Schedule 8 to the [Courts Legislation Amendment Act 2003](#), continue to apply to a matter that was referred for mediation or neutral evaluation under that Part before that commencement where that mediation or evaluation had not been completed before that commencement.

## **Part 15 Provisions consequent on enactment of [Courts Legislation Amendment Act 2005](#)**

### **22 Abolition of office of master and acting master of Supreme Court**

- (1) The offices of master of the Supreme Court and acting master of the Supreme Court are abolished.
- (2) On the abolition of the office of master and acting master of the Supreme Court:

- (a) a person holding office as a master of the Supreme Court immediately before that abolition is by this clause appointed as an associate Judge of the Supreme Court, and
  - (b) a person holding office as an acting master of the Supreme Court immediately before that abolition is by this clause appointed as an acting associate Judge of the Supreme Court.
- (3) Any such person holds office subject to such terms and conditions as are specified in the instrument of the person's appointment as a master or acting master of the Supreme Court or as may be agreed by the Governor and the person.
  - (4) In particular, any such person who was holding office for a specified term is taken to have been appointed to the new office for the balance of that term of office.
  - (5) Sections 113 and 114 apply to an associate Judge or acting associate Judge appointed by this clause as if a reference to the person's appointment as an associate Judge or acting associate Judge were a reference to the person's appointment as a master or acting master of the Supreme Court.
  - (6) Any assignment of a master or acting master to the Court of Appeal or to a Division that had effect under section 116 immediately before the abolition of the office of master or acting master is taken, on that abolition, to continue to have effect as an assignment of the associate Judge or acting associate Judge to the Court of Appeal or to the relevant Division.
  - (7) Subclause (6) does not affect the Governor's power to revoke an assignment under section 116 (b).
  - (8) The seniority of a person appointed as associate Judge or acting associate Judge by this clause is to be determined under section 117 as if the date of his or her assignment as an associate Judge or acting associate Judge to the Court of Appeal or to a Division were the date of his or her assignment as a master or acting master to the Court of Appeal or the relevant Division.
  - (9) Service as a master or acting master of the Supreme Court is to be reckoned for all purposes as service as an associate Judge or acting associate Judge of the Supreme Court.

### **23 Abolition of offices to have no effect on proceedings**

- (1) Proceedings pending before or being heard by a person who held the office of master or acting master of the Supreme Court immediately before the abolition of that office may continue to be heard and determined by the person as an associate Judge or acting associate Judge.
- (2) Section 104, as in force immediately before the abolition of the office of master and

acting master of the Supreme Court, continues to apply in respect of any decision, judgment, order, opinion, direction or determination of the Court in a Division constituted by a master that was made or given before the abolition of the office.

#### **24 Construction of references**

- (1) A reference in any other Act (except the *Constitution Act 1902*), or in any instrument made under any Act, to a master or acting master of the Supreme Court (however expressed) is to be read as a reference to an associate Judge or acting associate Judge of the Supreme Court, unless otherwise provided by the regulations.
- (2) A reference in section 111 of this Act to a retired associate Judge includes a reference to a retired master of the Supreme Court.