

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 8 October 1986)

(SENATOR VIGOR)

A B I L L

FOR

An Act to make provision for more liberal rights of standing and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

- 5 1. This Act may be cited as the Standing (Federal and Territory Jurisdiction) Act 1986.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Object of Act

3. (1) The object of this Act is to extend as far as possible the right of access to the courts by -

(a) creating a general right of access to the courts in public interest litigation subject only to exceptions where the plaintiff has neither a proprietary, material, financial or special interest in the subject-matter of the proceeding nor the capacity adequately to maintain the proceeding or where, in a case entailing the enforcement of private rights, the plaintiff is not a satisfactory representative of the holders of those private rights; and 5 10

(b) enabling private citizens to lay an indictment against a person for any offence for which that person has been committed for trial. 15

(2) It is the intention of the Parliament that the provisions of this Act shall be interpreted so as to further the object set out in sub-section (1).

Interpretation

4. In this Act, unless the contrary intention appears - 20

"enactment" means -

(a) an Act;

(b) an Ordinance of, or an Imperial Act or an Act of a State in its application in, a Territory other than the Northern Territory or Norfolk Island; 25

(c) an instrument (including a rule, regulations and a by-law) in force under an Act or an Ordinance as mentioned in paragraph (b); or

5 (d) a provision of an Act, of an Act or Ordinance as mentioned in paragraph (b) or of an instrument as mentioned in paragraph (c),

but does not include any of the applied provisions as defined by section 3 of the Commonwealth Places (Application of Laws) Act 1970;

10 "plaintiff", in relation to a proceeding, means a person seeking relief in the proceeding;

"State enactment" means -

(a) an Act of a State or an Imperial Act in its application in a State;

15 (b) an Act or Ordinance of the Northern Territory or of Norfolk Island or an Imperial Act in its application in either of those Territories;

20 (c) an instrument (including a rule, regulations and a by-law) in force under an Act or Ordinance as mentioned in paragraph (a) or (b); and

(d) a provision of such an Act, of an Act or Ordinance as mentioned in paragraph (b) or of an instrument as mentioned in paragraph (c).

Proceedings to which this Act applies

25 5. (1) Subject to sub-section (3), this Act applies to the following proceedings:

(a) a proceeding in any court -

(i) in respect of a matter arising under the Constitution, or involving its interpretation, or arising under an enactment; or

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(ii) against the Commonwealth, a person being sued on behalf of the Commonwealth or an officer of the Commonwealth,

to the extent that the relief sought in the proceeding is by way of a declaration, an injunction or a prerogative writ (including a writ of certiorari, a writ of prohibition, a writ of mandamus, a writ of habeas corpus and a writ of, or an information of, quo warranto);

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(b) a proceeding in any court (other than a court exercising jurisdiction under a law in force in the Northern Territory or Norfolk Island), to the extent that the relief sought in the proceeding is by way of an injunction or a declaration, being relief for which, apart from this Act, a proceeding may, at the time when the proceeding is commenced, be commenced and maintained by the Attorney-General;

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(c) a proceeding in any court, to the extent that the relief sought in the proceeding is provided for -

(i) by an enactment specified in Schedule 1 or 2; or

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(ii) by an enactment that declares the relief to be relief to which this Act applies.

5 (2) A reference in sub-section (1) to relief by way of a declaration, an injunction or a prerogative writ includes a reference to relief (by whatever name called) in the nature of a declaration, an injunction or a prerogative writ, respectively, and provided for -

(a) by an enactment that commences after the commencement of this Act; or

(b) by a State enactment,

in substitution for, or as equivalent to, that relief.

10 (3) This Act does not apply to a proceeding begun before the commencement of this Act.

Territories

6. This Act extends to each external Territory.

Act to bind Crown

15 7. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

Standing, &c., of Attorneys-General, &c.

8. This Act does not affect -

20 (a) the standing of the Attorney-General or of the Attorney-General of a State or of the Northern Territory to commence and maintain a proceeding;

25 (b) the power of an Attorney-General referred to in paragraph (a) to authorise a person to commence and maintain a proceeding as relator;

- (c) where an enactment authorises a person to commence and maintain a proceeding or to apply for particular relief - the right of the person to commence and maintain the proceeding or to apply for the relief;
- (d) where a person has been authorised to commence and maintain a proceeding as relator - the standing of the person to commence and maintain the proceeding; or 5
- (e) the operation of an authority (by whatever name called) given by the Attorney-General or by the Attorney-General of a State or of the Northern Territory to a person to act as relator in a proceeding. 10

Act not to affect other laws

9. This Act does not affect -

- (a) the operation of a law relating to the jurisdiction of a court; 15
- (b) the powers of a court in relation to a proceeding that is oppressive, vexatious, frivolous or an abuse of the process of a court; or
- (c) the operation of a law relating to vexatious litigants (however described). 20

Standing to bring proceedings

10. (1) In relation to a proceeding to which this Act applies, the principles and rules of the common law and of equity the operation of which determines the standing of the plaintiff to bring the proceeding are abolished. 25

(2) Every person has standing to commence and maintain a proceeding to which this Act applies unless -

5 (a) in a proceeding concerning the performance or purported performance of a duty, or the exercise or purported exercise of a power or function, that is imposed or conferred for the benefit of a person or persons other than the plaintiff, the court finds, on application, that the proceeding does not accord with the interests and wishes, so far as the court can ascertain them, of that person or those persons; or

10 (b) the court finds that -

15 (i) the plaintiff has no proprietary interest, material interest, financial interest or special interest in the subject-matter of the proceeding;

(ii) the plaintiff is manifestly unable adequately to conduct the proceeding; and

20 (iii) because of that inability, the conduct of the proceeding by the plaintiff would, or could reasonably be expected to, cause or result in harm to a person's interest (of whatever kind) in the subject-matter of the proceeding.

25 (3) The question whether the plaintiff has standing to commence and maintain a proceeding shall not be determined as a preliminary or interlocutory matter in the proceeding unless -

(a) a preliminary or interlocutory application as to the plaintiff's standing has been made; and

- (b) the court is satisfied, in the circumstances, that it is proper to determine the question of the plaintiff's standing as a preliminary or interlocutory matter.

(4) Where, in relation to a proceeding to which this Act applies, an enactment provides that an act is to be or may be done by a specified person for the purposes of conducting the proceeding as plaintiff, the act may, if the proceeding is commenced under this Act by some other person, be done by that last-mentioned person instead of the person so specified. 5

(5) The preceding provisions of this section do not limit any discretion that the court has to refuse relief, but the court shall not refuse relief by reason only that - 10

- (a) the plaintiff does not have a proprietary interest, a material interest, a financial interest or a special interest in the subject-matter of the proceeding; or 15

- (b) the interest of the plaintiff in the subject-matter of the proceeding is no different from the interest of any other person in that subject-matter.

Intervention

11. (1) At any stage of a proceeding to which this Act applies, the court may direct that notice of the proceeding be given to the Attorney-General or to any person specified by the court. 20

(2) The Attorney-General, or the Attorney-General of a State or of the Northern Territory, may intervene in a proceeding to which this Act applies, whether or not notice of the proceeding has been given under sub-section (1). 25

(3) Any other person may, with the leave of the court, intervene in a proceeding to which this Act applies.

(4) The leave may be given on such terms as the court thinks fit.

(5) In determining whether to grant leave, the matters that the court shall take into account include -

5 (a) whether the person has a proprietary interest, a material interest, a financial interest or a special interest in the subject-matter of the proceeding.

10 (b) if the proceeding concerns the performance or purported performance of a duty, or the exercise or purported exercise of a power or function, that is imposed or conferred for the benefit of some other person or other persons - the wishes and interests of that other person or those other persons in relation to the proceeding, to the extent that it is practicable to ascertain them;
15 and

(c) whether the person is able to take part adequately in the proceeding as a party.

(6) Leave shall not be refused by reason only that -

20 (a) the person does not have a proprietary interest, a material interest, a financial interest or a special interest in the subject-matter of the proceeding; or

(b) the interest of the person in the subject-matter of the proceeding is no different from the interest of any other person in that subject-matter.

25 (7) Where a person intervenes as mentioned in sub-section (2) or (3), the person thereupon becomes a party to the proceeding.

(8) Where the Attorney-General, or the Attorney-General of a State or of the Northern Territory, intervenes as mentioned in sub-section (2), the orders as to costs that the court may make include an order for costs against that Attorney-General.

(9) The preceding provisions of this section do not affect any other right that a person has to intervene in a proceeding. 5

(10) In this section, a reference to a court includes a reference to a court hearing an appeal from a decision of some other court.

Amicus curiae 10

12. (1) At any stage of a proceeding to which this Act applies, the court may, on application, give leave to a person to make a submission orally or in writing to the court.

(2) Leave may be given on such terms as the court thinks fit. 15

(3) A person does not, by reason only that such a submission has been made, become a party to the proceeding.

(4) In this section, a reference to a court includes a reference to a court hearing an appeal from a decision of some other court. 20

Costs in relator proceedings

13. (1) This section applies in relation to a proceeding to which this Act applies where the Attorney-General or the Attorney-General of a State or of the Northern Territory has -

- (a) authorised the plaintiff to bring the proceeding as a relator; or 25

(b) commenced the proceeding on the relation of some other person.

5 (2) The power of the court to make an order for costs in the proceeding extends to making such an order against the Attorney-General concerned, whether or not that Attorney-General is a party.

(3) Where the court has made an order under sub-section (2), the court may, on the application of the plaintiff, order that, notwithstanding any agreement to the contrary -

10 (a) the plaintiff is not liable to indemnify the Attorney-General concerned in relation to the liability of that Attorney-General under the order for costs; and

(b) any security for costs held by or for the benefit of that Attorney-General is not enforceable.

15 (4) In determining whether to make an order under sub-section (2) or (3), the court shall take into account the extent and nature of the participation of the Attorney-General concerned in relation to the institution and conduct of the proceeding.

20 **Abolition of maintenance**

14. (1) Conduct (not being conduct that constitutes champerty) in relation to a proceeding -

(a) in a court exercising jurisdiction in a matter mentioned in section 75 or 76 of the Constitution; or

25 (b) in a court of a Territory other than the Northern Territory or Norfolk Island,

is not unlawful by reason only that it constitutes maintenance.

(2) A contract is not illegal, void or unenforceable by reason only that it relates to conduct of the kind referred to in sub-section (1).

(3) Sub-sections (1) and (2) do not apply in relation to anything done before the commencement of this Act. 5

Private indictments for Commonwealth or Territory offences

15. (1) Unless the contrary intention appears in the enactment creating the offence, where -

(a) a person (in this section called "the defendant") has been committed for trial in relation to an indictable offence, or an indictable offence triable before the Supreme Court of the Australian Capital Territory; and 10

(b) at the expiration of 3 months after the defendant has been so committed - 15

(i) an indictment in relation to the offence has not been filed; and

(ii) the Attorney-General, the Director of Public Prosecutions or a Special Prosecutor has not declined to proceed further in the prosecution under Division 2 of Part X of the Judiciary Act 1903, the Director of Public Prosecutions Act 1983, the Special Prosecutors Act 1982 or the Australian Capital Territory Supreme Court Act 1933, 20
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any person may, after the expiration of the period referred to in paragraph (b), prosecute the offence by indictment in his or her own name.

(2) Sub-section (1) does not affect the operation of Division 2 of Part X of the Judiciary Act 1903, the Director of Public Prosecutions Act 1983, the Special Prosecutors Act 1982 or the Australian Capital Territory Supreme Court Act 1933.

SCHEDULE 1

Sub-section 3(1)

Aboriginal and Torres Strait Islanders Heritage (Interim Protection) Act 1984, sub-section 26(1)

Administrative Decisions (Judicial Review) Act 1977, sub-sections 5(1), 6(1), 7(1) and 7(2) 5

Bankruptcy Act 1966, sections 178 and 303

Civil Aviation (Offenders on International Aircraft) Act 1970, sub-section 16(1)

Commonwealth Electoral Act 1918, paragraphs 360(1)(v), (vi), (vii) and (viii) and sub-sections 383(1) and (2) 10

Companies Act 1981, sub-sections 30R(1), 32(5), 273(10), 282(9), 311(3), 459(6) and 518(8), section 537 and sub-sections 574(1) and (2)

Companies (Acquisition of Shares) Act 1980, sub-section 60A(4) 15

Conciliation and Arbitration Act 1904, sub-section 108(1), paragraph 109(1)(b) and section 110

Crimes (Hijacking of Aircraft) Act 1972, sub-section 16(1)

Crimes (Protection of Aircraft) Act 1973, sub-section 13(1)

Diplomatic and Consular Missions Act 1978, sub-sections 4(1) and 5(1) 20

Environment Protection (Sea Dumping) Act 1981, section 33

Extradition (Commonwealth Countries) Act 1966, sections 16 and 29

Extradition (Foreign States) Act 1966, sub-section 19(1)

Liquid Fuel Emergency Act 1984, sub-sections 37(1) and (2) 25

Petroleum Retail Marketing Sites Act 1980, sub-section 12(1)

Petroleum (Submerged Lands) Act 1967, section 91

Racial Discrimination Act 1975, paragraphs 25(a) and (b), and, so far as paragraph 25(e) provides for a declaration of right, that paragraph 30

Referendum (Machinery Provisions) Act 1984, sub-sections 103(2) and 139(1) and (2)

Securities Industry Act 1980, sub-section 35(4) and sections 42, 134 and 149

Trade Practices Act 1974, sections 126 and 131 35

World Heritage Properties Conservation Act 1983, section 14

SCHEDULE 2

Sub-section 3(1)

Administration and Probate Ordinance 1929, sub-section 95(1)

City Area Leases Ordinance 1936, section 9A

