

Australian Capital Territory Supreme Court

No. 13 of 1971

An Act relating to the Judges of the Supreme Court of the
Australian Capital Territory.

[Assented to 5 April 1971]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1) This Act may be cited as the *Australian Capital Territory Supreme Court Act 1971*.

(2) The *Australian Capital Territory Supreme Court Act 1933–1969** is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Australian Capital Territory Supreme Court Act 1933–1971*.

Commence-
ment.

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

Definitions.

3. Section 5 of the Principal Act is amended by omitting from the definition of “ ‘ Judge ’ or ‘ Judge of the Supreme Court ’ ” the words “ the Judge ” (first and last occurring) and inserting in their stead the words “ a Judge ”.

Establishment
of Supreme
Court.

4. Section 6 of the Principal Act is amended by omitting from sub-section (3.) the words “ one Judge ” and inserting in their stead the words “ not more than two Judges ”.

Appointment
of Judges and
additional
Judges.

5.—(1) Section 7 of the Principal Act is amended—

(a) by omitting sub-section (1.) and inserting in its stead the following sub-sections:—

“ (1.) The Governor-General may appoint, by commission, a person who, or persons each of whom, is or has been—

(a) a Judge of another court created by the Parliament or of a court of a State; or

* Act No. 34, 1933, as amended by No. 27, 1935; No. 57, 1945; No. 52, 1947; No. 65, 1948; Nos. 51 and 80, 1950; Nos. 17 and 36, 1955; No. 47, 1956; No. 34, 1957; No. 43, 1958; No. 51, 1959; No. 110, 1960; No. 109, 1964; No. 92, 1965; Nos. 8 and 93, 1966; No. 156, 1968; and No. 40, 1969.

- (b) a practising barrister, solicitor, barrister and solicitor, or legal practitioner of the High Court or of the Supreme Court of a State, the Australian Capital Territory or another Territory of the Commonwealth, of not less than five years' standing,

to be a Judge or Judges of the Supreme Court.

“(1A.) The Judges appointed under the last preceding sub-section have seniority as Judges of the Supreme Court according to the dates of their commissions.”; and

- (b) by omitting sub-section (4.).

(2.) The Judge of the Supreme Court appointed under sub-section (1.) of section 7 of the Principal Act and holding office immediately before the commencement of this Act shall, upon the commencement of this Act, be deemed to have been appointed under sub-section (1.) of section 7 of the Principal Act as amended by this Act.

6. Section 8 of the Principal Act is amended by omitting sub-sections (2.) and (3.) and inserting in their stead the following sub-sections:—

Exercise of jurisdiction.

“(2.) The Judge appointed under sub-section (1.) of the last preceding section, or, where there is more than one such Judge, the senior of those Judges, may, from time to time, make arrangements as to which Judge is to exercise the jurisdiction of the Court that is exercisable by one Judge.

“(3.) Where—

- (a) there is more than one Judge appointed under sub-section (1.) of the last preceding section; and
- (b) the senior of those Judges is, by reason of absence or for any other reason, unable to discharge the duties of his office,

the next senior of those Judges may, from time to time, make arrangements as to which Judge is to exercise the jurisdiction of the Court that is exercisable by one Judge.

“(4.) Where there are two or more additional Judges of the Court and—

- (a) there is no Judge holding office under sub-section (1.) of the last preceding section; or
- (b) the Judge appointed under sub-section (1.) of the last preceding section, or, if there is more than one such Judge, each of those Judges, is, by reason of absence or for any other reason, unable to discharge the duties of his office,

the senior additional Judge may, from time to time, make arrangements as to which of the additional Judges is to exercise the jurisdiction of the Court that is exercisable by one Judge.”.

Exercise of
jurisdiction in
relation to
legal
practitioners.

7. Section 8AA of the Principal Act is amended by omitting sub-sections (2.), (3.) and (4.) and inserting in their stead the following sub-sections:—

“(2.) The Judge appointed under sub-section (1.) of section seven of this Act, or, where there is more than one such Judge, the senior of those Judges, may, from time to time, make arrangements as to which Judges are to exercise the jurisdiction of the Court that is exercisable in accordance with the last preceding sub-section.

“(3.) Where—

- (a) there is more than one Judge appointed under sub-section (1.) of section seven of this Act; and
- (b) the senior of those Judges is, by reason of absence or for any other reason, unable to discharge the duties of his office,

the next senior of those Judges may, from time to time, make arrangements as to which Judges are to exercise the jurisdiction of the Court that is exercisable in accordance with sub-section (1.) of this section.

“(4.) Where there are more than three additional Judges of the Court and—

- (a) there is no Judge holding office under sub-section (1.) of section seven of this Act; or
- (b) the Judge appointed under sub-section (1.) of section seven of this Act, or, if there is more than one such Judge, each of those Judges, is, by reason of absence or for any other reason, unable to discharge the duties of his office,

the senior additional Judge may, from time to time, make arrangements as to which of the additional Judges are to exercise the jurisdiction of the Court that is exercisable in accordance with sub-section (1.) of this section.

“(5.) If three or more Judges sitting together in accordance with sub-section (1.) of this section are divided in opinion as to the decision to be given on any question, the question shall be decided according to the opinion of the majority, if there is a majority, but if the Judges are equally divided in opinion—

- (a) where a Judge appointed under sub-section (1.) of section seven of this Act is, or Judges appointed under that sub-section are, so sitting, the opinion of that Judge or the senior of them, as the case may be, shall prevail; or
- (b) where no such Judge is so sitting, the opinion of the senior additional Judge present shall prevail.”

Salaries,
allowances and
travelling
expenses.

8. Section 8B of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “The Judge” and inserting in their stead the words “A Judge”; and
- (b) by omitting from sub-section (7.) the words “the Judge” and inserting in their stead the words “a Judge”.