



Australian Capital Territory

# ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)

A2016-28

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Australian Capital Territory

# ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)

A2016-28

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An Act to amend the *ACT Civil and Administrative Tribunal Act 2008*, and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

## **1 Name of Act**

This Act is the *ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)*.

## **2 Commencement**

- (1) This Act (other than the following provisions) commences on the day after its notification day:
- section 4;
  - schedule 1, amendments 1.7 and 1.8;
  - schedule 1, part 1.5.

*Note* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

- (2) Section 4 and schedule 1, part 1.5 (Magistrates Court Act 1930) commence 6 months after this Act's notification day.
- (3) Schedule 1, part 1.4 (Judicial Commissions Act 1994), amendments 1.7 and 1.8 commence immediately after the commencement of the *Judicial Commissions Amendment Act 2015*, section 3.

## **3 Legislation amended**

This Act amends the *ACT Civil and Administrative Tribunal Act 2008*.

*Note* This Act also amends other legislation (see sch 1).

## **4 Sections 18, 20 and 21**

*omit*

\$10 000

*substitute*

\$25 000

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**5 Section 94***substitute***94 Appointment of presidential members**

- (1) The Executive may appoint—
- (a) a president of the tribunal; and
  - (b) other presidential members of the tribunal.
- Note* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.
- (2) Also, the Executive may appoint a person as—
- (a) a temporary president of the tribunal; or
  - (b) a temporary other presidential member of the tribunal.
- (3) The Executive must not appoint a person under subsection (1) (a) or (2) (a) unless—
- (a) the person is—
    - (i) a magistrate; or
    - (ii) eligible to be appointed as a magistrate; and
  - (b) if the person is a magistrate—
    - (i) the person has agreed to the appointment; and
    - (ii) the Chief Magistrate has been consulted about the person's appointment.

*Note* Magistrates are appointed by the Executive under the [Magistrates Court Act 1930](#), s 7. For eligibility for appointment as a magistrate, see that Act, s 7AA and s 7A.

- (4) The appointment of a magistrate as president of the tribunal does not—
  - (a) affect the term or conditions of appointment of the magistrate; or
  - (b) prevent the magistrate from exercising the functions given to a magistrate under any territory law.
- (5) The Executive must not appoint a person under subsection (1) (b) or (2) (b) unless the person is a lawyer and has been a lawyer for 5 years or more.
- (6) The appointment of a presidential member is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

## **6 Term of appointment New section 98 (2A)**

*insert*

- (2A) However, a person who is a magistrate must not be appointed as president under section 94 (1) (a), or as temporary president under section 94 (2) (a), for a term that extends beyond the date when the person turns 65 years old.

## **7 Conditions of appointment generally Section 100**

*after*

this Act

*insert*

or a determination under the [Remuneration Tribunal Act 1995](#)

**8 Presidential members not to do other work  
Section 103**

*after*

section 94 (1)

*insert*

, or a temporary presidential member appointed under section 94 (2),

**9 New section 103 (2)**

*insert*

- (2) This section and the *Magistrates Court Act 1930*, section 7G (Magistrates not to do other work) do not apply to the appointment of a magistrate as president or temporary president of the tribunal.

**10 Section 105**

*substitute*

**105 Functions of president**

- (1) The president is responsible for ensuring—
- (a) that decisions are made according to law; and
  - (b) the orderly and prompt discharge of tribunal business.

**Examples—par (a)**

- 1 ensuring decisions are free from improper interference
- 2 ensuring the quality and consistency of decision making by tribunal members, including by maintaining skills and resources for that purpose

**Examples—par (b)**

- 1 allocating people to make up a tribunal for a particular application
- 2 allocating people to make up an appeal tribunal

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The president may delegate the president’s functions under this Act to another presidential member.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

**11 Functions of appeal president  
Section 106**

*omit*

**12 Functions of non-presidential members  
Section 107 (2)**

*omit*

**13 Functions of registrar—non-presidential functions  
Section 111 (2)**

*omit*

**14**      **New part 32**

*insert*

**Part 32**                      **Transitional—ACT Civil and  
Administrative Tribunal  
Amendment Act 2016 (No 2)**

**360**      **General president taken to be president of tribunal**

- (1) This section applies to the person who, immediately before the day the *ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)*, section 5 commences, was the general president of the tribunal.
- (2) The person is taken to be appointed as the president of the tribunal on the same conditions that applied to the person's appointment as general president.

**361**      **Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)*.
- (2) A regulation may modify this part (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this part.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

**362 Expiry—pt 32**

This part expires 2 years after the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

**15 Dictionary, note 2**

*insert*

- Chief Magistrate
- magistrate

**16 Dictionary, definitions of *appeal president* and *general president***

*omit*

**17 Dictionary, new definition of *president***

*insert*

***president*** means the president appointed under section 94 (1) (a) or a temporary president appointed under section 94 (2) (a).

**18 Dictionary, definition of *presidential member***

*substitute*

***presidential member*** means the president or another presidential member appointed under section 94 (1) (b) or a temporary presidential member appointed under section 94 (2) (b).

**19 Further amendments, mentions of *general president***

*omit*

general president

*substitute*

president

*in*

- section 22P
- section 28
- sections 50 and 51
- section 72
- section 78
- sections 89 to 92
- section 97
- section 105A
- section 107
- section 111
- section 112

**20 Further amendments, mentions of *appeal president***

*omit*

appeal president

*substitute*

president

*in*

- sections 77 and 78
- sections 80 and 81
- sections 85 and 86

## Schedule 1 Consequential amendments

(see s 3)

### Part 1.1 Court Procedures Act 2004

#### [1.1] Sections 11, 11A, 11B and 45

*omit*

general president

*substitute*

president

### Part 1.2 Freedom of Information Act 1989

#### [1.2] Section 64 (1)

*omit*

general president

*substitute*

president

#### [1.3] Section 64 (2), definition of *general president*

*substitute*

*president*—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

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## Part 1.3                      Guardianship and Management    of Property Act 1991

### [1.4]            Section 68

*omit*

general president

*substitute*

president

### [1.5]            Dictionary, definition of *general president*

*omit*

### [1.6]            Dictionary, new definition of *president*

*insert*

*president*, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

## Part 1.4                      Judicial Commissions Act 1994

### [1.7]            Section 16A (3) (a) (ii)

*omit*

general president

*substitute*

president

**[1.8] Section 16A (5)**

*omit*

**[1.9] Dictionary, definition of *general president***

*omit*

**[1.10] Dictionary, definition of *head of jurisdiction*, paragraph (c)**

*omit*

general president

*substitute*

president

**[1.11] Dictionary, new definition of *president***

*insert*

*president*, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

## Part 1.5 Magistrates Court Act 1930

**[1.12] Section 266A (1) (b)**

*omit*

\$10 000

*substitute*

\$25 000

**[1.13] New chapter 13**

*insert*

## **Chapter 13      Transitional—ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)**

### **470 Existing proceedings in Magistrates Court**

- (1) This section applies to a proceeding in relation to a civil dispute if—
  - (a) the amount claimed, or the amount sought to be declared as a debt, is at least \$10 000 but not more than \$25 000; and
  - (b) the proceeding started in the Magistrates Court before the commencement day; but
  - (c) immediately before the commencement day, the hearing in the proceeding had not started.
- (2) The proceeding may—
  - (a) continue in the Magistrates Court; or
  - (b) on application by a party to the proceeding—be transferred to the ACAT if the Magistrates Court—
    - (i) considers it just to do so; and
    - (ii) makes an order to transfer the proceeding.
- (3) In deciding whether to transfer a proceeding (the *existing proceeding*), the Magistrates Court must consider whether there is another proceeding about a matter associated with the existing proceeding before the Magistrates Court.

- (4) In this section:

*civil dispute*—see the *ACT Civil and Administrative Tribunal Act 2008*, section 16.

*commencement day* means the day the *ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)*, section 4 commences.

#### **471 Transitional regulations**

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of the *ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)*.
- (2) A regulation may modify this chapter (including in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act or another territory law.

#### **472 Expiry—ch 13**

This chapter expires 2 years after the day it commences.

*Note* Transitional provisions are kept in the Act for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see [Legislation Act](#), s 88).

## **Part 1.6                      Mental Health Act 2015**

### **[1.14]      Section 185 (2), note**

*omit*

general president

*substitute*

president

### **[1.15]      Section 186 (2), note**

*omit*

general president

*substitute*

president

### **[1.16]      Section 189**

*omit*

general president

*substitute*

president

### **[1.17]      Dictionary, definition of *general president***

*omit*

### **[1.18]      Dictionary, new definition of *president***

*insert*

***president***, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

## Part 1.7 Road Transport (Driver Licensing) Regulation 2000

### [1.19] Section 12 (9)

*substitute*

(9) In this section:

*judicial officer* means a judge, the associate judge, a magistrate, a registrar of the Supreme Court or Magistrates Court, the principal registrar of the ACT Law Courts and Tribunal or the president of the ACAT.

*president*, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 5 May 2016.

**2 Notification**

Notified under the [Legislation Act](#) on 15 June 2016.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the ACT Civil and Administrative Tribunal Amendment Bill 2016 (No 2), which was passed by the Legislative Assembly on 7 June 2016.

Clerk of the Legislative Assembly

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