

2015

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**COURTS LEGISLATION AMENDMENT BILL 2015 (No 2)
Amendment to be moved by the Attorney-General**

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Attorney-General**

COURTS LEGISLATION AMENDMENT BILL 2015 (No 2)

Purpose of the Bill

The Bill will amend a number of Acts, Regulations and Rules to create further improvements and efficiencies in ACT court and tribunal structures and processes, and the operation of the ACT justice and coronial systems.

The Acts, Regulations and Rules amended are the *ACT Civil and Administrative Tribunal Act 2008*, *Civil Law (Wrongs) Act 2002*, *Coroners Act 1997*, *Court Procedures Act 2004*, *Court Procedures Rules 2006*, *Domestic Violence and Protection Orders Act 2008*, *Freedom of Information Act 1989*, *Freedom of Information Regulation 1991*, *Judicial Commissions Amendment Act 2015*, *Juries Act 1967*, *Legal Aid Act 1977*, *Magistrates Court Act 1930* and *Supreme Court Act 1933*.

Background

Clauses 45 and 46 of the Bill insert new sections 37U(5)(c) and 37U(7) into Part 2B (Remuneration, allowances and other entitlements of judges) of the Supreme Court Act. These amendments are technical in nature, to rectify the unintended consequence of a determination of the ACT Remuneration Tribunal made on 25 September 2015, that a calculation cannot be made to determine the judicial pension entitlements of former Presidents of the Court of Appeal.

The effect of new section 37U(5)(c) is to provide that, for the application of the *Judges Pension Act 1968* (Cth) in relation to determining judicial pension entitlements, a reference to the ‘appropriate current judicial salary’ in relation to a person who was appointed to a judicial office that has been abolished, is a reference to the amount determined by the Minister to be reasonable having regard to the rate of salary payable for the office before it was abolished, and for other offices under Part 2B of the Supreme Court Act.

This amendment is necessary because, in the Remuneration Tribunal’s Accompanying Statement to Determination 8 of 2015, the Tribunal stated it had decided not to determine remuneration for the President of the Court of Appeal as the position had been abolished in April 2015 by the *Courts Legislation Amendment Act 2015*. The Tribunal has advised that, under section 10(1) of the *Remuneration Tribunal Act 1995*, it is required to determine pay and allowances for the ‘holders’ of various offices, and as a result of the office being abolished, there can be no office holder and the Tribunal therefore cannot make a determination. Determination 8 of 2015 also revoked the previous salary determination for the position of the President of the Court of Appeal (Determination 8 of 2014).

Under section 37U of the Supreme Court Act, judges are entitled to the same remuneration, allowances and entitlements as a judge of the Federal Court, which are determined by the *Judges Pensions Act 1968* (Cth). The *Judges Pensions Act* provides that where a judge retires, they are entitled to a pension at the annual rate of 60% of the ‘appropriate current judicial salary’, which is defined as the rate that would be payable to the judge if they had not retired or died. Because Determination 8 of 2015

did not determine the President's salary, and also revoked the previous determination, there is no determination setting out the salary for the Court of Appeal President for the purpose of calculating pension entitlements. The amendment gives the Minister the power to determine the salary for this purpose. This is appropriate, as it is not the Tribunal's role to determine the salary of a non-existent position.

The effect of new section 37U(7)(a) is to provide that such a determination is a notifiable instrument. Section 37U(7)(b) provides the power for the determination to be made retrospectively. In the case of the President of the Court of Appeal, a determination will be required to be made with effect from 25 September 2015 to ensure there is not detrimental effect on existing pension entitlements.

Human Rights considerations

The amendment does not raise any human rights considerations, except to ensure that former holders of the position of President of the Court of Appeal can continue to have their existing pension entitlements calculated as intended. The retrospectivity of the amendment does not adversely affect the existing rights of any person, but rather positively affects the existing judicial pension rights of former Court of Appeal Presidents.

Clause notes

Part 14 – *Supreme Court Act 1933*

Clause 45 (Resident judges) inserts new section 37U(5)(c) that provides that, for the application of the *Judges Pension Act 1968* (Cth) in relation to determining judicial pension entitlements, a reference to the ‘appropriate current judicial salary’ for a person who was appointed to an office that has been abolished, is a reference to the amount determined by the Minister to be reasonable having regard to the rate of salary payable – (i) for the office before it was abolished; and (ii) for other offices under Part 2B of the *Supreme Court Act*. This is intended to ensure that for any office that is abolished, for which a salary cannot be determined by the Remuneration Tribunal, the Minister can make a determination that determines the salary of that office for the purposes of the calculation of a judicial pension for that office.

Clause 46 inserts new section 37U(7)(a) that provides that a determination made under new section 37U(5)(c) is a notifiable instrument. It also inserts new section 37U(7)(b), which provides that for the first determination in relation to the holder of the abolished office made under section 37U(5)(c), the determination takes effect on, unless otherwise stated in the determination, the day immediately after the office is abolished. The retrospective operation of such a determination will not have any adverse impact on the existing rights of any person; rather it will have a beneficial effect.