

**2018**

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

**COURTS AND OTHER JUSTICE LEGISLATION AMENDMENT BILL 2018 (No 2)**

**EXPLANATORY STATEMENT**

**Presented by  
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Attorney-General**

## **COURTS AND OTHER JUSTICE LEGISLATION AMENDMENT BILL 2018 (NO 2)**

This explanatory statement relates to the Courts and Other Justice Legislation Amendment Bill 2018 (No 2) (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

### **Overview**

#### **Purpose of the Bill**

The Bill will amend a number of pieces of legislation to create further improvements and efficiencies in ACT court and tribunal structures and processes, and the operation of the ACT justice system.

The Acts amended are the *ACT Civil and Administrative Tribunal Act 2008*, *Court Procedures Act 2004*, *Director of Public Prosecutions Act 1990*, *Magistrates Court Act 1930*, and *Supreme Court Act 1933*.

The Bill makes a range of amendments to the terms, conditions and governance of appointments to judicial and justice related statutory offices. The Act will commence on a day fixed by the Minister by written notice.

The ACT Civil and Administrative Tribunal Act and Director of Public Prosecutions Act have been amended to increase the age limit and eligibility limit of the ACT Civil and Administrative Tribunal presidential members and the Director of Public Prosecutions from 65 years to 70 years.

Amendments to the Court Procedures Act expand and clarify governance provisions in relation to the statutory office of the Principal Registrar, ACT Courts and Tribunal.

The Magistrates Court Act has been amended to increase the age limit and eligibility limit of magistrates from 65 years to 70 years. Further amendment has been made to provide for magistrates to be appointed part-time, or to enter into arrangements to work part-time. Both of these changes respond to representations from current Magistrates.

The Supreme Court Act has been amended to remove the fixed seven year appointment term limits in relation to the position of Master of the Supreme Court (known as the Associate Judge) and instead provides that the Master is appointed until they turn 70 years old. This amendment reflects the increased civil and criminal jurisdiction of the Associate Judge, and acknowledges that the Associate Judge should have independence and tenure aligning with that of other resident judge. The Bill also makes amendments to outlines the seniority of the Associate Judge with respect to the resident judges, acting judges and additional judges.

### **Human rights implications**

The Bill supports rights to equality under section 8 of the *Human Rights Act 2004* by increasing age limits for service in these important public offices. While it is not proposed to remove the age limit entirely, and the increased limit could also be argued to be discriminatory based on age, it is considered that this limitation can be justified as reasonable and proportionate as it is consistent with the retirement age for the Federal judiciary set by s 72 of the Australian Constitution. It also provides some level of turnover in the judiciary allowing new people to be appointed to be Magistrates and encouraging fresh ideas and perspectives.

The Bill supports the ability of older people to serve in public office for longer by increasing the age limit and eligibility limit for magistrates and other statutory office holders. By providing for part-time appointments and arrangements for magistrates this Bill supports greater inclusion by promoting flexible working arrangements. More flexible working arrangements for magistrates may, for example, facilitate a transition to retirement or accommodate family or carer responsibilities.

### **Regulatory impact analysis**

There are no regulatory implications arising from the Bill.

## **CLAUSE NOTES**

### **Part 1 – Preliminary**

#### **Clause 1      Name of Act**

This clause provides that the name of the Act is the *Courts and Other Justice Legislation Amendment Act 2018 (No 2)*.

#### **Clause 2      Commencement**

This clause provides that the Act commences on a day fixed by the Minister by written notice.

#### **Clause 3      Legislation Amended**

This clause identifies the legislation amended by the Bill – the *ACT Civil and Administrative Tribunal Act 2008*, *Court Procedures Act 2004*, *Director of Public Prosecutions Act 1990*, *Magistrates Court Act 1930*, and *Supreme Court Act 1933*.

### **Part 2 – ACT Civil and Administrative Tribunal Act 2008**

#### **Clause 4      Section 98(3) (Term of appointment)**

This clause amends section 98(3) of the *ACAT Civil and Administrative Tribunal Act 2008* to provide that a person who is appointed as President of the ACAT must not be appointed for a term that extends beyond the date when the person turns 70 years old, rather than 65 years old. Given that only magistrates, or people that are eligible to be magistrates are eligible for appointment as President of the ACAT, this amendment is consequential to the change in retirement/eligibility age for magistrates.

Further currently s 98(3) only applies to ‘a person who is a magistrate’ which meant that appointees under section 94(3)(a)(i) are only able to be appointed until the age of 65 years whereas a person who was appointed under section 94(3)(a)(ii) could be appointed for a term of up to 7 years and their term would not be limited by age. The amendment also remedies the inconsistency between the retirement age for a magistrate who is appointed as ACT Civil and Administrative Tribunal (ACAT) president under section 94(3)(a)(i), and someone ‘eligible to be appointed as a magistrate’ who is appointed as ACAT president under section 94(3)(a)(ii).

### **Part 3 – Court Procedures Act 2004**

#### **Clause 5      New sections 11BB to 11BD**

This clause inserts three new sections in part 2A: section 11BB (Leave of absence), section 11BC (Principal registrar must not do other work) and section 11BD (Disclosure of interests). The new sections clarify the governance arrangements of the Principal Registrar statutory office established by part 2A in order to bring the governance provisions for the position into line with best practice and with those applying to other statutory positions in the Territory such as the Director of Public Prosecutions and the Solicitor-General. These provisions establish a framework for

disclosure of interests and preclude the Principal Registrar undertaking other work, restrictions which are appropriate to ensure the independence of this position and remove potential for conflicts of interest.

#### **Clause 6      Section 11C (Ending principal registrar's appointment)**

This clause further clarifies and expands the governance arrangements of the Principal Registrar statutory office established by part 2A.

The clause substitutes section 11C(1) for s 11C, to insert additional circumstances for when the Executive may end a person's appointment. These include in instances of misbehaviour by the occupant of the position, where physical or mental incapacity substantially affects the exercise of the person's functions, or where the Principal Registrar does other work in contravention of the prohibition. These clauses are standard governance provisions for statutory offices.

The clause also adds section 11C(2) which provides the circumstances in which the Executive must end a person's appointment as Principal Registrar. These circumstances are largely retained from the existing provision in s11C, but also includes an extra circumstance of failing without reasonable excuse to disclose the person's financial interests, consistent with similar provisions applying to the DPP or Solicitor-General.

#### **Clause 7      New section 11E (Consultants)**

This clause inserts in part 2A a new section which provides the principal registrar with the option to engage consultants to perform services for the principal registrar. The engagement of the consultant must be in writing and the terms and conditions must be approved by the Attorney-General.

### **Part 4 – *Director of Public Prosecutions Act 1990***

#### **Clause 8      Section 22(5) (Appointment)**

This clause amends section 22(5) to increase the retirement age limit and eligibility age limit for the Director of Public Prosecutions from 65 years to 70 years. The amendment will not apply retroactively.

### **Part 5 – *Magistrates Court Act 1930***

#### **Clause 9      New section 7C(2) to (5) (Conditions of appointment of magistrates)**

Previously there has been no provision for the part-time appointment of magistrates in the ACT, despite other Australian jurisdictions recognising the benefits of flexible working arrangements by allowing magistrates, in some circumstances, to work part time. It is recognised that part-time arrangements for performance of duties assist the court in managing its business and in targeting resources to work demand, while supporting the ability of magistrates to transition to retirement or take up family or carer responsibilities.

This clause provides for the appointment of magistrates on a full-time or part-time basis. A magistrate is taken to be appointed on a full-time basis unless the instrument of appointment states otherwise.

The clause allows for a full-time magistrate, or a part-time magistrate, to enter into a written arrangement with the Chief Magistrate and the Attorney-General in relation to working hours and other expectations. What the part-time arrangement must contain will be determined by the Executive.

This framework supports the Chief Magistrate running the business of the court in the manner that best suits the court, while providing the Government with the ability to monitor the resourcing arrangements of the Court.

#### **Clause 10 Section 7D (Term of appointment of magistrates)**

This clause amends section 7D to increase the retirement age limit and eligibility age limit for the appointment of magistrates from 65 to 70 years old. This amendment is consistent with the retirement age for Supreme Court judges in the ACT and with the retirement age for magistrates across most other Australian jurisdictions.

#### **Clause 11 New section 7D(3) and (4)**

This clause inserts three new sub-sections which provide that the increased retirement age will apply to magistrates who are currently appointed. This will mean that all current magistrates can remain in office, if they wish, until they turn 70. It will not apply to magistrates who have retired or otherwise do not have a current appointment prior to the commencement date.

Section 7D(4) states that after 12 months of the commencement date section 7D(3) will expire. This will have no impact on the operation of the increased retirement age with respect to current magistrates.

### **Part 6 – *Supreme Court Act 1933***

#### **Clause 12 New section 5(3A) (Seniority of judges)**

This clause inserts a new section 5(3A) which clarifies the seniority of the associate judge in relation to the resident judges, acting judges and additional judges. All resident, acting and additional judges are senior to the associate judge.

#### **Clause 13 Section 41 (Term of appointment of master)**

Appointment to the position of Master of the ACT Supreme Court (known as the Associate Judge) is limited to terms of appointment not exceeding 7 years with the possibility of reappointment. The Master is not a resident judge and the conditions of appointment are separate from those of resident judges, however, there is still public interest in providing independence and tenure through appointment until 70 years old. This clause removes the term limit for the Master position and provides that the appointment of Master does not extend beyond when a person turns 70 years old.

**Clause 14    Section 41A (Extension of master's term of appointment)**

This clause is consequential on amendments made in clause 13 and removes section 41A as there will no longer be any requirement to extend the Master's term of appointment.