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Member for Ginninderra

Attorney-General

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Dr Colin Adrian

Chair

ACT Remuneration Tribunal

PO Box 964

CIVIC SQUARE ACT 2608

Dear Dr Adrian

I write to update you about changes to the terms and conditions of judicial and justice related statutory office holders that the Government will introduce with the Courts and Other Justice Legislation Amendment Bill 2018 (No 2).

The Bill:

- a) increases the retirement age and appointment eligibility age limit of Magistrates, the Director of Public Prosecutions and the ACAT President from 65 to 70;
- b) introduces a mechanism for Magistrates to be appointed on a part time basis, or to transition from full time to part time work by written agreement with the Chief Magistrate and approved by the Attorney-General;
- c) includes new governance provisions for the Principal Registrar under the Court Procedures Act which are in line with those applying to the Director of Public Prosecutions and the Solicitor-General; and
- d) removes the ability for the Executive to appoint the Associate Judge for limited terms of up to seven years (an appointment must now be made until the Associate Judge is 70).

I attach a copy of the bill and its explanatory statement for your information.

The introduction of provisions for part time work by magistrates will require a corresponding update to the Executive determination about conditions of magistrates' appointment. The Justice and Community Safety Directorate will liaise with the Secretary of the Remuneration Tribunal to ensure that the Tribunal is in a position to consider whether consequential amendments to its determination on magistrates' remuneration and allowances will be required.

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

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Gordon Ramsay MLA

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gordon Ramsay', written in a cursive style.

Gordon Ramsay MLA

Encl:

- 1) Courts and Other Justice Legislation Amendment Bill 2018 (No 2)
- 2) Explanatory Statement for the Bill

26 SEP 2018

2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Courts and Other Justice Legislation Amendment Bill 2018 (No 2)

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2018

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Courts and Other Justice Legislation Amendment Bill 2018 (No 2)

A Bill for

An Act to amend legislation about courts, and for other purposes

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

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Courts and Other Justice Legislation Amendment*
4 *Act 2018 (No 2)*.

5 **2 Commencement**

6 This Act commences on a day fixed by the Minister by written notice.

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

9 *Note 2* A single day or time may be fixed, or different days or times may be
10 fixed, for the commencement of different provisions (see Legislation Act,
11 s 77 (1)).

12 *Note 3* If a provision has not commenced within 6 months beginning on the
13 notification day, it automatically commences on the first day after that
14 period (see Legislation Act, s 79).

15 **3 Legislation amended**

16 This Act amends the following legislation:

- 17 • *ACT Civil and Administrative Tribunal Act 2008*
18 • *Court Procedures Act 2004*
19 • *Director of Public Prosecutions Act 1990*
20 • *Magistrates Court Act 1930*
21 • *Supreme Court Act 1933*.

1 **Part 2** **ACT Civil and Administrative**
2 **Tribunal Act 2008**

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

5 *substitute*

6 (3) However, a person must not be appointed as president under
7 section 94 (1) (a), or as temporary president under section 94 (2) (a),
8 for a term that extends beyond the date when the person turns 70 years
9 old.

1 **Part 3** **Court Procedures Act 2004**

2 **5** **New sections 11BB to 11BD**

3 *insert*

4 **11BB** **Leave of absence**

5 The Attorney-General may grant leave of absence to the
6 principal registrar on the conditions about remuneration and
7 otherwise that the Attorney-General decides.

8 **11BC** **Principal registrar must not do other work**

9 The principal registrar must not, without the Attorney-General's
10 consent, do either of the following:

- 11 (a) practise as a legal practitioner;
12 (b) have other paid employment.

13 **11BD** **Disclosure of interests**

14 The principal registrar must give written notice to the
15 Attorney-General of all direct or indirect financial interests that the
16 principal registrar has or acquires—

- 17 (a) in a business, whether in the ACT or elsewhere; or
18 (b) in a corporation carrying on a business mentioned in
19 paragraph (a).

6 Section 11C*substitute***11C Ending principal registrar's appointment**

(1) The Executive may end the appointment of a person as principal registrar for—

- (a) misbehaviour; or
- (b) physical or mental incapacity, if the incapacity substantially affects the exercise of the person's functions; or
- (c) failing to comply with section 11BC (Principal registrar must not do other work).

(2) The Executive must end the person's appointment if the person—

- (a) becomes bankrupt or personally insolvent; or

Note **Bankrupt or personally insolvent**—see the Legislation Act, dictionary, pt 1.

- (b) is convicted, or found guilty, in the ACT of an offence punishable by imprisonment for at least 1 year; or

Note **Found guilty**—see the Legislation Act, dictionary, pt 1.

- (c) is convicted, or found guilty, outside the ACT of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or

- (d) is absent, other than on leave granted under section 11BB, for 14 consecutive days or for 28 days in any 12-month period; or

- (e) fails, without reasonable excuse, to comply with the person's obligations under section 11BD.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

1 **7 New section 11E**

2 *in part 2A, insert*

3 **11E Consultants**

- 4 (1) The principal registrar may, on behalf of the Territory, engage
5 consultants to, or to perform services for, the principal registrar.
- 6 (2) Consultants must be engaged on written terms and conditions decided
7 by the principal registrar that are approved by the Attorney-General.
- 8 (3) However, the principal registrar must not enter into a contract of
9 employment under this section.

1 **Part 4** **Director of Public Prosecutions**
2 **Act 1990**

3 **8 Appointment**
4 **Section 22 (5)**

5 *omit*

6 65 years

7 *substitute*

8 70 years

Part 5 Magistrates Court Act 1930

**9 Conditions of appointment of magistrates
New section 7C (2) and (3)**

insert

- (2) A person's appointment as a magistrate is taken to be on a full-time basis unless the instrument of appointment states that the appointment is on a part-time basis.
- (3) A magistrate may, by written agreement with the Chief Magistrate, and with the approval of the Attorney-General—
- (a) if the magistrate is appointed on a full-time basis—arrange to work on a part-time basis; or
- (b) if the magistrate is appointed on a part-time basis—arrange to work on a full-time basis.

**10 Term of appointment of magistrates
Section 7D**

omit

65 years

substitute

70 years

11 New section 7D (3) to (5)

insert

- (3) Subsection (1) applies to an appointment whether made before, on or after the commencement day.
- (4) Subsection (3), this subsection and subsection (5) expire 12 months after the commencement day.

- 1 (5) In this section:
- 2 *commencement day* means the day the *Courts and Other Justice*
- 3 *Legislation Amendment Act 2018 (No 2)*, part 5 commences.

1 **Part 6** **Supreme Court Act 1933**

2 **12** **Seniority of judges**
3 **New section 5 (3A)**

4 *insert*

5 (3A) The resident judges, additional judges and acting judges are senior to
6 the associate judge.

7 **13** **Section 41**

8 *substitute*

9 **41** **Term of appointment of master**

10 The master is appointed for the term ending when the master turns 70
11 years old.

12 **14** **Extension of master's term of appointment**
13 **Section 41A**

14 *omit*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2018.

2 Notification

Notified under the Legislation Act on 2018.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

2018

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

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

EXPLANATORY STATEMENT

**Presented by
Gordon Ramsay MLA
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.

