

2009

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

COURTS AND TRIBUNAL (APPOINTMENTS) AMENDMENT BILL 2009

EXPLANATORY STATEMENT

Presented by
Vicki Dunne MLA
Shadow Attorney-General

Courts and Tribunal (Appointments) Amendment Bill 2009

Outline

The *Courts and Tribunal (Appointments) Amendment Bill 2009* would amend the following Acts:

- *ACT Civil and Administrative Tribunal Act 2008*;
- *Magistrates Court Act 1930*; and
- *Supreme Court Act 1933*.

The amendments would require the Executive, before appointing a:

- presidential member of the ACT Civil and Administrative Tribunal;
- magistrate or special magistrate in the Magistrates Court; or
- resident judge or the master in the Supreme Court;

to consult with the appropriate Legislative Assembly committee.

The Speaker would be empowered to nominate a standing committee of the Legislative Assembly to be the appropriate committee. If no nomination is in effect the appropriate committee would be the standing committee of the Legislative Assembly responsible for the consideration of legal issues.

The committee would have thirty days to consider a proposed appointment and would be empowered to make a recommendation to the Executive about the proposed appointment. The Executive would not be permitted to make the appointment until either it has received the committee's recommendation on the proposed appointment or 30 days have passed since the date of the Executive's consultation with the committee, whichever happens first.

The Executive would be required to have regard to the committee's recommendation, but would not be required to follow it.

It should be noted that the legislation that this Bill would amend carries no provision for a sitting officer to be "promoted", for example, if it was to be proposed that a resident judge of the Supreme Court be appointed Chief Justice. Thus, if the Executive were to propose the appointment of a sitting officer to a position of some other capacity, which would otherwise be caught by the provisions of this Bill, then that proposed appointment would be considered a "new" appointment. Accordingly, the Executive would be required to consult with the appropriate committee on the proposed appointment in accordance with the provisions of this Bill.

Further, it should be noted that the deliberations of the appropriate Legislative Assembly committee would be conducted in accordance with the Assembly's Standing and Temporary Orders. Whilst those orders provide flexibility as to whether a committee's deliberations are conducted in public or private session, and therefore, in the latter case, confidential, the usual practice of committees, in considering proposed appointments to government boards, committees, etc, is to undertake those deliberations in private session. It is anticipated that a committee, in considering proposed appointments under this bill, would follow that usual practice.

Courts and Tribunal (Appointments) Amendment Bill 2009

Detail

Part 1 — Preliminary

Clause 1 — Name of Act

The short title – *Courts and Tribunal (Appointments) Amendment Act 2009*.

Clause 2 — Commencement

Commencement is the day after the Act is notified on the Legislation Register.

Part 2 — ACT Civil and Administrative Tribunal Act 2008

Clause 3 — Legislation amended

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

Clause 4 — Section 94A

This new clause provides that:

1. before appointing a presidential member the Executive must consult with the appropriate Legislative Assembly committee;
2. the committee may make a recommendation to the Executive about the proposed appointment;
3. the Executive must not make the appointment until it has received the committee's recommendation, or until 30 days have passed, whichever occurs first;
4. in making the appointment, the Executive must have regard to any recommendation made by the committee;
5. the Speaker may nominate the appropriate committee, but if no nomination is in effect, the standing committee of the Legislative Assembly responsible for legal matters is the appropriate committee.

Part 3 — Magistrates Court Act 1930

Clause 5 — Legislation amended

This part amends the *Magistrates Court Act 1930*.

Clause 6 — Section 7AA

This new clause provides that:

1. before appointing a magistrate the Executive must consult with the appropriate Legislative Assembly committee;
2. the committee may make a recommendation to the Executive about the proposed appointment;
3. the Executive must not make the appointment until it has received the committee's recommendation, or until 30 days have passed, whichever occurs first;
4. in making the appointment, the Executive must have regard to any recommendation made by the committee;

Clause 7 — Section 8AA

This new clause provides that:

1. before appointing a special magistrate the Executive must consult with the appropriate Legislative Assembly committee;
2. the committee may make a recommendation to the Executive about the proposed appointment;
3. the Executive must not make the appointment until it has received the committee's recommendation, or until 30 days have passed, whichever occurs first;
4. in making the appointment, the Executive must have regard to any recommendation made by the committee;

Clause 8 — Section 320A

This new clause provides that the Speaker may nominate the appropriate committee, but if no nomination is in effect, the standing committee of the Legislative Assembly responsible for legal matters is the appropriate committee.

Clause 9 — Dictionary

This clause inserts the definition of *appropriate Legislative Assembly committee*.

Part 4 — Supreme Court Act 1933**Clause 10 — Legislation amended**

This part amends the *Supreme Court Act 1933*.

Clause 11 — Section 4AA

This new clause provides that:

1. before appointing a resident judge the Executive must consult with the appropriate Legislative Assembly committee;
2. the committee may make a recommendation to the Executive about the proposed appointment;
3. the Executive must not make the appointment until it has received the committee's recommendation, or until 30 days have passed, whichever occurs first;
4. in making the appointment, the Executive must have regard to any recommendation made by the committee;

Clause 12 — Section 40A

This new clause provides that:

1. before appointing the master the Executive must consult with the appropriate Legislative Assembly committee;
2. the committee may make a recommendation to the Executive about the proposed appointment;
3. the Executive must not make the appointment until it has received the committee's recommendation, or until 30 days have passed, whichever occurs first;
4. in making the appointment, the Executive must have regard to any recommendation made by the committee;

Clause 13 — Section 75

This new clause provides that the Speaker may nominate the appropriate committee, but if no nomination is in effect, the standing committee of the Legislative Assembly responsible for legal matters is the appropriate committee.

Clause 14 — Dictionary

This clause inserts the definition of *appropriate Legislative Assembly committee*.