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

COURTS LEGISLATION AMENDMENT BILL 2013

REVISED EXPLANATORY STATEMENT

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Explanatory Statement

This revised explanatory statement relates to the Courts Legislation Amendment Bill 2013, as introduced in the ACT Legislative Assembly.

Overview of Bill

The Courts Legislation Amendment Bill 2013 amends several pieces of legislation to make key improvements to the criminal and civil justice system in the ACT.

The legislation amended includes the *ACT Civil and Administrative Tribunal Act 2008*, *Births, Deaths and Marriages Registration Act 1997*, *Coroners Act 1997*, *Magistrates Court Act 1930* and the *Supreme Court Act 1933*.

The Bill implements measures designed to improve the efficiency of the Magistrates Court and the ACT Civil and Administrative Tribunal and the operation of the ACT coronial system and post-mortem processes and practices.

The *Coroners Act 1930* and the *Births Deaths and Marriages Registration Act 1997* have been amended to ensure that deaths only undergo coronial investigation and full autopsy for good reasons, and then only to the extent that is strictly necessary to obtain the information that the coroner requires.

The Bill also makes a number of important amendments to improve the criminal and civil justice system in the ACT including to:

- reduce the double-handling of related criminal offences by allowing summary offences related to serious indictable matters to be referred to the Supreme Court to deal with them at the same time;
- relax the formal requirements for committal matters to provide more flexibility for the Magistrates Court to dispense with unnecessary requirements, and for the parties to be able to consent to a committal, where appropriate;
- repeal two Childrens Court provisions in the *Magistrates Court Act 1930* to ensure compliance with recent High Court authority;
- clarify when the statutory test must be satisfied to transfer matters from the Supreme Court to the Magistrates Court;
- clarify that the ACT Civil and Administrative Tribunal (ACAT) has power to award incidental costs;
- repeal the unworkable 12 week time limit for a Tribunal interim order to expire; and
- make minor amendments to improve the operation of the ACAT.

Human Rights Considerations

The Courts Legislation Amendment Bill 2013 does not limit the human rights in the ACT's *Human Rights Act 2004*. Clause 23, section 90B gives rise to consideration of human rights, specifically section 21 of the Human Rights Act (fair trial).

Currently, the *Supreme Court Act 1933* permits the court to deal with a related summary offence, but only after the trial of the indictable matters, not at the same time and with the consent of the accused. However, defendants who plead guilty are unable to take advantage of the current provision, because there has been no trial. This amendment will formalise a process which will support the interests of accused people. Accused people will now have all of their matters dealt with expediently by the Supreme Court. The Supreme Court must only deal with back-up and related offences, transferred from the Magistrates Court, with which an accused has been charged, at the conclusion of the trial of an accused person for an indictable offence or in the course of sentencing. But the Supreme Court must only do so, if it considers that it is in the interests of justice to do so. In considering the interests of justice, the Supreme Court would take into account any adverse impact on the defendant.

The amendment does not limit the right to a fair trial including the right to equal access, the right to legal advice and representation and the right to procedural fairness. A person accused of a serious criminal offence and related or back-up summary offences who is tried on indictment will now have all of their criminal charges decided by a competent, independent and impartial court (section 21 (1), HR Act). A person charged with summary and indictable offences will have a fair trial provided for by existing jury trial provisions and further supported by appeal provisions as set out in the *Supreme Court Act 1933*, part 2A Court of Appeal.

Clause Notes

Clause 1 Name of Act

This clause names the Act as the *Courts Legislation Amendment Act 2013*.

Clause 2 Commencement

This clause notes that the Act will commence 28 days after it is notified in the ACT Legislation Register.

Clause 3 Legislation amended

This clause lists the legislation which the Act amends.

Clause 4 Section 32 heading

This clause replaces the existing heading of section 32 with a new heading to reflect the content of new section 32 (1) in clause 5 below.

Clause 5 Section 32 (1)

This clause replaces section 32 (1) with a new subsection to clarify that the Tribunal can deal with an application or part of an application by a person, which it considers to be an abuse of the Tribunal's process, as well as an application or part of a application, which it considers to be frivolous or vexatious, as set out in subsection (2).

The Tribunal can also deal with an application or part of an application by a person, which has been determined in another jurisdiction to be frivolous or vexatious, as set out in subsection (2).

Clause 6 Section 32 (2) (a) and (b)

This clause clarifies that the Tribunal may deal with an application or part of an application as set out in subsection (2), as there are occasions when it is appropriate for the Tribunal to only deal with a part of an application rather than the whole application.

Clause 7 Applications to be heard Section 36 (a)

This clause clarifies that the Tribunal may refuse to hear an application or part of an application.

Clause 8 Section 36, note 1

This clause amends the note to reflect the ability of the Tribunal to refuse to hear an application or part of an application.

Clause 9 Costs of proceedings Section 48 (2) (a)

This clause clarifies that when the Tribunal decides an application in favour of the applicant, it can award incidental costs of an application against the other party. Incidental costs may include application filing fees, business name search fees, subpoena filing fees and hearing fees.

Clause 10 Section 48 (2)(d)

This clause updates a reference to the term *frivolous and vexatious applications* in section 48 (2) (d) to reflect the new heading of section 32 in clause 4 of the Bill – *Dismissing or striking out applications*.

Clause 11 Section 48 (3), note

This clause removes the note in section 48 (3) as it has now been included in new section 48 (2) (a).

**Clause 12 Interim orders
Section (53) (3)**

This clause removes the 12 week time limit for a Tribunal interim order to expire. While the 12 week timeline was initially applied to encourage timely completion of hearings, in practice, the 12 week timeframe is problematic and conflicts with the general principle of procedural fairness. For example, on occasion the Tribunal is unable to hear a matter, pending the resolution of other criminal matters in the Supreme Court, requiring the applicant to reapply for interim orders every 12 weeks until the criminal matters are determined. This leads to unrealistic filing timetables and additional costs on applicants.

Clause 13 Section 53 (4) (c)

This clause omits section 53 (4) (c) which is now otiose, due to the removal of the 12 week time limit for a Tribunal interim order to expire in clause 12.

**Clause 14 Statement of reasons
Section 60 (2)**

Clause 10 clarifies that either a written statement of reasons or an oral statement of reasons given by the Tribunal at the conclusion of a hearing or when it has reserved a decision and then re-listed to deliver the decision, can be given to a party to an application.

**Clause 15 Making and effect of orders
New section 61 (1) (c)**

Clause 15 inserts a new subsection 61(c) to clarify how an order made by the Tribunal takes effect.

**Clause 16 Reserving decisions
Sections 62 (4) and (5)**

This clause replaces subsections (4) and (5) with a new subsection (4) to clarify how the Tribunal or other Tribunal member may deliver a decision on an application.

Births, Deaths and Marriages Registration Act 1997

**Clause 17 Notification of deaths by doctors
Section 35 (1) penalty and note**

This clause enables a doctor who has considered information about a deceased person's medical history and the circumstances of a deceased person's death to give the registrar-general written notice of the cause of death within 48 hours after the death, if they are able to form an opinion about the probable cause of death.

The provision will maximise the appropriate issue of cause of death certificates by doctors and avoid the need for unnecessary coronial investigations, due to the unavailability of the treating doctor to issue a death certificate. Colleagues of treating doctors, as well as forensic pathologists, will now be able to issue death certificates.

Coroners Act 1997

**Clause 18 Coroner’s jurisdiction in relation to deaths
Section 13 (1) (e)**

This clause changes the requirements for an inquest to be held into the manner and cause of death of a person that occurs after medical intervention from 72 hours to 24 hours. The ACT is the only jurisdiction in Australia, other than South Australia, that has a time limit requiring an inquest into deaths occurring within a stated time after a medical procedure. This amendment will mirror the 24 hours time limit in South Australia.

Clause 19 Section 13 (1) (g)

This clause changes the requirement for an inquest to be held into the manner and cause of death of a person who dies without having seen a doctor from three months to six months. This extension of time will address those instances where a person dies without having seen a doctor for longer than three months, and yet it is well documented that the person suffered from a potentially life threatening natural disease, which would adequately account for the death.

**Clause 20 Warrant for exhumation of body or recovery of ashes
Section 27 (2) (c)**

This clause clarifies that a reference to the term ‘a post-mortem’ in section 27 (2) (c) means a post-mortem examination.

Clause 21 Dictionary, new definition of *post-mortem examination*

This clause clarifies that a post-mortem examination may include other types of post-mortem examination of a body, other than a full autopsy.

Magistrates Court Act 1930

Clause 22 New division 3.5.1

This clause allows the Magistrates Court to dispense with one or more of the formal requirements in part 3.5 of the Magistrates Court Act, if the interests of justice require it. Requiring the court to do something “in the interests of justice” places a positive obligation on the court to exercise a jurisdiction only in appropriate cases.

Clause 23 New section 90B

This clause enables summary offences related to an indictable offence to be transferred from the Magistrates Court to the Supreme Court once the accused has been committed for trial. The clause also sets out the transfer process which must be followed by the prosecutor and the Magistrates Court. If the accused person is charged with additional summary offences after committal, the court must also transfer these offences to the Supreme Court to be dealt with under Part 8 of the *Supreme Court Act 1933*. The purpose of this amendment is to avoid unnecessary handling of summary charges while related indictable offences are committed for trial.

**Clause 24 Committal for sentence for indictable offence tried summarily
Section 92A (2)**

This clause substitutes a new subsection (2) to facilitate the court in sentencing when dealing with a person charged with a back-up or related offence in accordance with proposed new section 94 (2) in clause 25 of the Bill.

**Clause 25 Discharge or committal for trial
New section 94 (2) to (4)**

This clause outlines the process a prosecutor and the court must follow if an accused person committed for trial under subsection (1) has been charged with a back-up or related offence. Subsequent back-up or related offences charged after committal must be transferred and dealt with by the Supreme Court

**Clause 26 Transfer of action from Supreme Court
New section 268 (2A)**

This clause enables the Supreme Court, when an application for transfer is made, to remit an action to the Magistrates Court for determination.

**Clause 27 Assignment of other magistrates for Children's Court matters
Section 291C (3) and (4)**

This clause repeals sections 291C (3) and (4) which prevent a challenge in any court to the Chief Magistrate's decision to assign or not to assign a matter to another magistrate. They also prevent a person from seeking common law remedies of prohibition, mandamus or injunctive relief in any court.

There is now High Court authority to the effect that any legislative provision which purports to remove from the Supreme Court, the power to review decisions of the Magistrates Court for jurisdictional error, is beyond the power of the Legislative Assembly.

**Clause 28 Children's Court may send cases to Supreme Court for sentencing
New section 291G (5)**

This clause compels the Children's Court, where it convicts a person of an indictable offence, to deal with any back-up or related offence in accordance with proposed new section 94 (2) in clause 25 of the Bill.

Clause 29 Dictionary, new definitions

This clause notes that the definitions of back-up and related offences in relation to indictable offences are in new section 68CA in clause 31 below.

Supreme Court Act 1933

Clause 30 Part 8 heading

This clause inserts a new heading of back-up and related offences for Part 8.

Clause 31 New section 68CA

This clause describes what a back-up offence and a related offence are in relation to an indictable offence.

Clause 32 Section 68D

This clause requires the Supreme Court to deal with back-up and related offences, transferred from the Magistrates Court with which an accused has been charged, at the conclusion of the trial of an accused person for an indictable offence or in the course of sentencing. But the Supreme Court must only do so if it considers that it is in the interests of justice to do so. In considering the interests of justice, the Supreme Court would take into account any adverse impact on the defendant.

**Clause 33 Procedure
Section 68E**

This clause updates the section to reflect the addition of a back-up offence.

Clause 34 Section 68F

This clause enables the Supreme Court to remit back-up and related offences to the Magistrates Court.

Clause 35 Dictionary, new definitions

This clause inserts new definitions of a back-up offence and a related offence in new section 68CA in clause 31 for Part 8.

Clause 36 Dictionary, definition of related summary offence

This clause removes the definition of related summary offence, which is now otiose.