

**2016**

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**ACT CIVIL AND ADMINISTRATIVE TRIBUNAL  
AMENDMENT BILL 2016 (NO 2)**

**EXPLANATORY STATEMENT**

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# ACT CIVIL AND ADMINISTRATIVE TRIBUNAL AMENDMENT BILL 2016 (NO 2)

## Introduction

This explanatory statement relates to the *ACT Civil and Administrative Tribunal Amendment Bill 2016 (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.

## Outline

### **Purpose of the Bill**

The bill amends the *ACT Civil and Administrative Tribunal Act 2008* (ACAT Act) to make a number of amendments resulting from the 2015 restructure of presidential positions at the ACT Civil and Administrative Tribunal (ACAT), and from a recent review into the civil dispute jurisdiction and appointment requirements of the head of ACAT. The principal purpose of the amendments contained in the bill is to increase access to justice for the ACT community. The bill also supports increased efficiencies in tribunal processes by clarifying and updating concepts, definitions and language.

With the expiry of a number of presidential member appointments in 2015, the Government evaluated the existing member structure of ACAT in order to determine whether the Tribunal was appropriately resourced to undertake its functions into the future. As a result of this evaluation, the presidential structure was increased by .5 FTE and the positions of general president and appeal president were combined into one role. The appointment of one person to undertake these roles follows similar approaches to the management of tribunals in other Australian jurisdictions and the practice in the ACT Supreme Court.

As a result of this decision, the bill contains amendments to combine the functions of general president and appeal president into the position of president of ACAT, and to change the title of the general president to president.

The bill also amends the ACAT Act to change the requirements of appointment as president of ACAT. The amendments will require that a person appointed as the president be either a magistrate, or eligible for appointment as a magistrate. A person will be eligible for appointment as a magistrate where they satisfy the criteria for appointment as a magistrate set out under the Act. These amendments appropriately balance the need to keep ACAT accessible and informal while also reflecting the standing of the position of president as a head of jurisdiction in the ACT.

The bill makes amendments to give exclusive jurisdiction to ACAT to hear and determine civil disputes for claims of \$25,000 or less, an increase from the current \$10,000 limit. The civil dispute jurisdiction of ACAT has not changed since the inception of ACAT in 2009. Prior to this, a \$10,000 jurisdiction had been in place at the ACT Small Claims Court since 1997. As the jurisdictional limit in real terms decreases over time, the ability of Canberrans to seek redress through the ACAT has been affected. These amendments will ensure that the civil dispute jurisdiction of ACAT is appropriate to address the needs of the Canberra community. The increase to the civil dispute jurisdiction does not affect any other jurisdiction at the ACAT.

The bill also contains a number of transitional provisions, including to:

- provide that the current general president is taken to be appointed as the president of the tribunal until the end of their term (and on the same conditions as currently provided) once the Act has commenced; and
- ensure that existing proceedings before the Magistrates Court for an amount (or declaration of a debt) that is more than \$10,000 and less than \$25,000 can be transferred to the ACAT on application by a party to the proceeding and provided a hearing has not begun.

### **Human Rights Considerations**

The bill does not engage any rights under the *Human Rights Act 2004*.

# **ACT Civil and Administrative Tribunal Amendment Bill 2016 (No 2)**

## **DETAIL**

### **Clause 1 Name of Act**

This is a technical clause that names the short title of the Act. The name of the Act will be the *ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)*.

### **Clause 2 Commencement**

This clause provides that the amendments relating to the increase in civil dispute jurisdiction at the ACAT (sections 4, schedule 1, part 1.5) will commence 6 months after the Act is notified.

The amendments contained in schedule 1, amendments 1.7 and 1.8 will commence immediately after the commencement of section 3 of the *Judicial Commissions Amendment Act 2015*.

All other provisions in the Act commence the day after the Act is notified.

### **Clause 3 Legislation amended**

This clause identifies the legislation amended by the Act.

### **Clause 4 Sections 18, 20 and 21**

This clause amends section 18 (\$10,000 limit on civil dispute applications) to increase the limit of the tribunal's jurisdiction on civil dispute applications to amounts of not more than \$25,000, or applications for declarations for debts of not more than \$25,000.

Sections 20 (Abandoning excess to come within jurisdiction) and 21 (Jurisdiction by agreement – amounts over \$10,000) are also amended to provide for the new jurisdictional limit of \$25,000.

### **Clause 5 Section 94**

This clause amends section 94 (Appointment of presidential members) to provide that the Executive may appoint a president and other presidential members to the ACAT. This section removes the separate position of appeal president to reflect the amalgamation of its functions into the role of the president.

When appointing the president, whether temporarily under section 94(2)(a) or for the full term under section 94(1)(a), the Executive must appoint a person who is either a magistrate or is eligible for appointment as a magistrate in the ACT.

If the person being appointed is a magistrate, the Executive must have the person's agreement to the appointment and have consulted with the Chief Magistrate of the ACT Magistrate's Court prior to making the appointment.

Subsection 94(4) provides that where a magistrate is appointed as president, the appointment does not affect the term or conditions of appointment as a magistrate or prevent them from exercising the functions of a magistrate under any territory law.

**Clause 6      Term of appointment**  
**New section 98(2A)**

This clause provides that where a magistrate is appointed as president, or temporary president, under section 94, the Executive may appoint this person for a term less than 7 years if the person being appointed will turn 65 years of age before a 7 year term can be concluded.

**Clause 7      Conditions of appointment generally**  
**Section 100**

This clause inserts a reference to clarify that ACAT member appointments are subject to conditions determined by the ACT Remuneration Tribunal.

**Clause 8      Presidential members not to do other work**  
**Section 103**

This clause clarifies that the president of ACAT, whether appointed temporarily or for their full term, cannot engage in other work without the Attorney-General's written consent.

**Clause 9      New section 103(2)**

New section 103(2) provides that section 103 of the ACAT Act and section 7G (Magistrates not to do other work) of the *Magistrates Court Act 1930* do not apply to a magistrate who is appointed (either temporarily or for the full term) as the president of ACAT.

This is a technical provision to ensure that a magistrate can be appointed as the president of the ACAT without requiring the Attorney-General's consent and without contravening section 103 of the ACAT Act or section 7G of the *Magistrates Court Act*.

**Clause 10     Section 105**

This clause substitutes the current provision to reflect the new functions of the president which incorporate functions that were formerly the responsibility of the appeal president.

This section allows the president to delegate their functions, which include the functions of the former appeal president, to another presidential member.

**Clause 11      Functions of appeal president  
Section 106**

This clause omits section 106 from the ACAT Act. Section 106 contains the functions for which the appeal president is responsible. Clause 17 of the bill incorporates the appeal president's functions into section 105 which contains the functions for which the president is now responsible.

**Clause 12      Functions of non-presidential members  
Section 107(2)**

Section 107(2) (Functions of non-presidential members) states that the general president must not give a direction to a non-presidential member about excising the functions of the appeal president without the appeal president's agreement.

This clause omits subsection (2) to reflect the amalgamation of the separate roles of general president and appeal president into the role of president.

**Clause 13      Section 111(2)**

Section 111(2) (Functions of registrar - non-presidential functions) provides the general president must not give a direction to a registrar about excising the functions of the appeal president without the appeal president's agreement. This clause omits subsection 2 to reflect the amalgamation of the separate roles of general president and appeal president into the role of president.

**Clause 14      New part 32**

This clause inserts new part 32 (Transitional – ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)) to make provisions dealing with transitional matters.

New section 360 provides that the person appointed as the general president of the ACAT is taken to be appointed as the president of the tribunal upon the Act's commencement. The person remains appointed for the same term and on the same conditions as those applicable to the person's appointment as general president.

New section 361 enables the Executive to make regulations dealing with transitional matters. The section contains two different regulation making powers.

Section 361(1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 361(2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify part 32 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision

of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 361(3) gives a regulation under section 362(2) full effect according to its terms. A provision of part 32 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of part 32 of the Act has no ongoing effect after the expiry of that part.

New section 362 provides that part 32 expires 2 years after the day it commences.

**Clause 15     Dictionary, note 2**

This clause amends the dictionary to include *Chief Magistrate* and *magistrate* as terms defined under the *Legislation Act 2001*.

**Clause 16     Dictionary, definitions of *appeal president* and *general president***

This clause removes the definition of *appeal president* and *general president* from the dictionary.

**Clause 17     Dictionary, new definition of *president***

This clause inserts a new definition for *president*, which is defined as the president appointed under section 94(1)(a) or a temporary president under section 94(2)(a) (Appointment of presidential members).

**Clause 18     Dictionary, definition of *presidential member***

This clause amends the dictionary to substitute the current meaning of *presidential member* to replace references to the *general president* and *appeal president* with the *president*, and to clarify that other presidential members refers to a person appointed under section 94(1)(b) for the full term of 7 years, or those appointed temporarily under section 94(2)(b).

**Clause 19     Further amendments, mentions of *general president***

This clause omits references to the *general president* in a number of sections within the Act and replaces it with references to the *president*.

This substitution reflects the new position of president which incorporates the roles and responsibilities of the former positions of general president and appeal president.

## **Clause 20 Further amendments, mentions of appeal president**

This clause omits references to the *appeal president* and a number of sections within the Act and replaces it with references to the *president*.

### **Schedule 1 Consequential amendments**

#### **Part 1.1 Court Procedures Act 2004**

##### **Amendment 1.1 Sections 11, 11A, 11B and 45**

Amendment 1.1 omits references to the *general president* and replaces with the *president* in sections 11 (Advisory committee), 11A (Appointment of principal registrar), 11B (Administrative functions of principal registrar) and 45 (Searches).

#### **Part 1.2 Freedom of Information Act 1989**

##### **Amendment 1.2 Section 64(1)**

Amendment 1.2 omits references to the *general president* and replaces with *president* in section 64(1) (Constitution of ACAT for certain proceedings).

##### **Amendment 1.3 Section 64(2), definition of *general president***

Amendment 1.3 substitutes the definition of *general president* with the new definition of *president* in section 64(2) (Constitution of ACAT for certain proceedings).

#### **Part 1.3 Guardianship and Management of Property Act 1991**

##### **Amendment 1.4 Section 68**

Amendment 1.4 omits references to the *general president* and replaces with *president* in section 68 (Emergency removal of disabled persons).

##### **Amendment 1.5 Dictionary, definition of *general president***

Amendment 1.5 removes the definition of *general president* from the dictionary.

##### **Amendment 1.6 Dictionary, definition of *president***

Amendment 1.6 inserts a new definition for *president* into the dictionary.

#### **Part 1.4 Judicial Commissions Act 1994**

##### **Amendment 1.7 Section 16A(3)(a)(ii)**

Amendment 1.7 omits references to the *general president* and replaces with *president* in section 16A(3)(a)(ii) (Protocol – complaints in relation to ACAT).

**Amendment 1.8      Section 16A(5)**

Amendment 1.8 removes the definition of *general president* from section 16A (Protocol – complaints in relation to ACAT).

**Amendment 1.9      Dictionary, definition of *general president***

Amendment 1.9 removes the definition of *general president* from the dictionary.

**Amendment 1.10      Dictionary, definition of *head of jurisdiction*, paragraph (c)**

Amendment 1.10 omits references to the *general president* and replaces with *president* in the dictionary.

**Amendment 1.11      Dictionary, new definition of *president***

Amendment 1.11 inserts a new definition for *president* into the dictionary.

**Part 1.6      *Magistrates Court Act 1930***

**Amendment 1.12      Section 266A(1)(b)**

Amendment 1.12 is a consequential amendment resulting from the increase to the civil dispute jurisdiction of the ACAT.

This amendment amends section 166A(1)(b) to provide that a proceeding may not be started in the Magistrates Court in relation to a civil dispute if an amount of not more than \$25 000 is claimed, or sought to be declared as a debt, whether or not any other relief is also sought. In effect, this amendment provides that the ACAT has exclusive jurisdiction in relation to civil disputes of not more than \$25 000.

**Amendment 1.13      New chapter 13**

This amendment inserts new chapter 13 (Transitional – ACT Civil and Administrative Tribunal Amendment Act 2016 (No 2)) into the Magistrates Court Act. This chapter contains provisions dealing with transitional matters.

New section 470 inserts transitional provisions to provide that where a civil application for amounts between \$10,000 and \$25,000 is already in the Magistrates Court at the time of the Act's commencement, either party to the application may apply to have their matter moved to the ACAT, provided the matter has not already proceeded to hearing.

In deciding whether to transfer a proceeding, the Magistrates Court must consider whether there is another proceeding about an associated matter also before the Magistrates Court. This requirement is connected with section 470(2)(b)(i) which requires the Magistrates Court to consider it just to transfer the proceeding to the ACAT.

New section 471 enables the Executive to make regulations dealing with transitional matters. The section contains two different regulation making powers.

Section 471 (1) enables the making of a regulation to deal with any transitional matter that arises as a result of the enactment of the bill. However, the scope of the regulation must be confined to the same sphere of operation as the amended Act, be strictly ancillary to the operation of the Act and not widen the Act's purpose.

Section 471(2) enables the making of a regulation that modifies the Act. A regulation under this section may only modify chapter 13 of the Act, and only if the Executive is of the opinion that the part does not adequately or appropriately deal with a transitional issue. A provision of this kind is an important mechanism for achieving the proper objectives, managing the effective operation, and eliminating transitional flaws in the application of the Act in unforeseen circumstances by allowing for flexible and responsive (but limited) modification by regulation.

Section 471(3) gives a regulation under section 471(2) full effect according to its terms. A provision of chapter 13 of the Act modified by regulation will operate in the same way (in relation to another provision of the Act or any other territory law) as if it were amended by an Act, and in accordance with established principles of statutory interpretation. The section is not expressed, and does not intend, to authorise the making of a regulation limiting future enactments of the Legislative Assembly. Also, any modification by regulation of chapter 13 of the Act has no ongoing effect after the expiry of that chapter.

New section 472 provides that the transitional provisions in chapter 13 expire 2 years after they commence. The note explains that notwithstanding the formal repeal of a transitional provision, it continues to have effect under section 88 of the *Legislation Act 2001*.

## **Part 1.6      *Mental Health Act 2015***

### **Amendment 1.14      Section 185(2), note**

Amendment 1.14 omits references to the *general president* and replaces with *president* in the note attached to section 185(2) (When ACAT may be constituted by presidential member).

**Amendment 1.15    Section 186(2), note**

Amendment 1.15 omits references to the *general president* and replaces with *president* in note attached to section 186(2) (When ACAT must be constituted by more members).

**Amendment 1.16    Section 189**

Amendment 1.16 omits references to the *general president* and replaces with *president* in section 189 (Directions to registrar).

**Amendment 1.17    Dictionary, definition of *general president***

Amendment 1.17 removes the definition of *general president* from the dictionary.

**Amendment 1.18    Dictionary, new definition of *president***

Amendment 1.18 inserts a new definition for *president* into the dictionary.

**Part 1.7        *Road Transport (Driver Licensing) Regulation 2000***

**Amendment 1.19    Section 12(9)**

Amendment 1.19 substitutes the definitions of *appeal president*, *general president* and *judicial officer* contained in section 12(9) (Form of driver licences) with new definitions of *president* and *judicial officer*.