A.C.T. Supreme Court (Transfer) Bill 1992

Date Introduced: 6 May 1992
House: House of Representatives
Portfolio: Attorney-General

Purpose
To provide for the transfer of responsibility for the Supreme Court of the Australian Capital Territory (the Court) from the Commonwealth to the Australian Capital Territory (ACT).

Background
The Court was established by the Australian Capital Territory Supreme Court Act 1933. The Court comprises a Chief Judge, two other resident Judges, 13 additional Judges each of whose primary commission was as a Judge of the Federal Court of Australia and a Master. At 30 June 1991 the Court employed 26 full time officers, four casual Sheriffs officers and five temporary officers employed as staff of the Judges and Master. The Registrar of the Court has responsibility for the management of the Court as well as performing certain statutory functions, including exercising judicial and quasi-judicial functions delegated by the Judges. In addition, the Registrar supervises the functions of the Sheriff of the ACT. Expenditure in relation to the Court in 1990-91 totalled $2.756 million and is estimated to total $2.742 million in 1991-92.

Under section 23 of the Australian Capital Territory (Self-Government) Act 1988 (the Act), the Legislative Assembly of the ACT (the Assembly) is excluded from making laws in relation to the establishment of courts. This exclusion ceases to have effect on 1 July 1992, unless omitted sooner by regulation (sub-section 23(4)). On 9 April 1992, the Assembly requested the Commonwealth Parliament amend the Act to insert a new Part, titled Part VA - THE JUDICIARY. The provisions requested by the Assembly for insertion in proposed Part VA included:

* a provision for the Court to have "... all original and appellate jurisdiction that is necessary to administer justice in the ACT and jurisdiction conferred by an Act, law of the Territory or Ordinance, provided that the Supreme Court shall not be bound to exercise any powers where it has jurisdiction concurrently with a lower court or tribunal, unless it is so required by legislation or Rules of Court."

* a provision for "... the removal from office of a judicial officer or member of a tribunal by the ACT Executive, but only at the request, by resolution, of the Legislative Assembly for the Australian Capital Territory acting in accordance with a report of a Judicial Commission."

* a provision for the establishment of a Judicial Commission which will have the function "... of investigating and reporting to the Attorney-General on allegations or complaints concerning the conduct or capacity of: (i) a Supreme Court Judge other than an additional Judge; (ii) the Master of the Supreme Court; (iii) a magistrate; and any other specified judicial officer or member of a tribunal."

* an amendment to the A.C.T. Self-Government (Consequential Provisions) Act 1988 that provides that "... the terms and conditions of transferring Judges shall be no less favourable than those of the Judges of the Federal Court of Australia"; and

* amendments to the Federal Court of Australia Act 1976 that allow "... the acceptance by Judges of that Court of commissions as additional Judges of the ACT Supreme Court and confirm "... the continuation of the appointments as additional Judges of the ACT Supreme Court held at the time of transfer of the ACT Supreme Court."

The request of the Assembly, which took the form of a motion, received the support of Assembly opposition and independents members.

In The Canberra Times of 14 March 1991, the Chief Justice of the ACT Supreme Court is reported as saying "it is the view of the judges that it would be inappropriate for the Supreme Court, charged, inter alia, with responsibility for ensuring that the ACT Government and legislature remains
within and lawfully exercises the powers granted to it or them, to be constitutionally subordinate to that legislature. The remarks of the Chief Justice were in response to a consultant's report on the future of ACT courts. Suggestions put forward by the report are reported to have included the establishment of a unified court system for the ACT. This Bill, which provides for the continued existence and jurisdiction of the Court, indicates rejection of the consultant’s report by the Assembly and the Commonwealth.

Main Provisions
This Bill will have effect from 1 July 1992 (clause 2).

Amendments to the Australian Capital Territory (Self-Government) Act 1988
Judicial officer is defined in clause 4 to be the Chief Justice of the Supreme Court; a Judge (other than an additional Judge) of the Supreme Court; the Master of the Supreme Court; the Chief Magistrate; a Magistrate; or any judicial office holder or member of a tribunal specified in a law relating to the establishment of a judicial commission for the ACT.

Under section 23 of the Act, the Assembly is excluded from making laws with respect to the establishment of courts and the admission of persons to practice as legal practitioners or regulating the practice of such persons. This exclusion will be removed by clause 6.

A new Part VA (proposed sections 48A-48D), titled ‘The Judiciary’, will be inserted into the Act by clause 8. Proposed Part VA deals with jurisdiction and powers of the Supreme Court; the retirement ages of Judges and the Master; the establishment of a Judicial Commission; the removal of a judicial officer from office; and the remuneration of judicial officers. Proposed section 48A provides that the Supreme Court is to have all original and appellate jurisdiction necessary for the administration of justice in the ACT; that further jurisdiction may be conferred on it by any Commonwealth or Territory law; and that the Supreme Court will not be bound to exercise its powers where it has concurrent jurisdiction with another court or tribunal.

A law that changes the retirement age of the Chief Justice, Judge (other than an additional Judge), or Master of the Supreme Court will not affect the term of office of a person appointed before the commencement of this Bill, unless the person has consented to the application of the law (proposed section 48B).

Proposed section 48C provides for the establishment of a judicial commission. A judicial commission is to comprise persons who have been judges of the High Court or are, or have been judges of State or Territory Supreme Courts (other than serving judges of the ACT Supreme Court). The function of a judicial commission will be to investigate and report to the Attorney-General of the ACT on complaints about the conduct or physical, or mental capacity of a judicial officer.

A law relating to the removal from office of a judicial officer will have to provide for certain matters, including that:
* a judicial officer may only be removed if a judicial commission has submitted a report to the Attorney-General of the ACT setting out the facts found by the commission, and stating that, in the commission’s opinion, the facts could amount to misbehaviour, or physical or mental incapacity warranting his/her removal; and
* the Assembly has decided that the facts amount to misbehaviour, or physical or mental incapacity, and has passed a motion requiring the Executive to remove the judicial officer from office (proposed section 48D).

The remuneration and allowances of the Chief Justice, the Judges, the Master, the Chief Magistrate and Magistrates of the ACT will be determined by the Remuneration Tribunal (clause 9).

New sections 29A and 29B will be inserted into the A.C.T. Self-Government (Consequential Provisions) Act 1988 (the Act) by clause 12. Proposed sections 29A is a saving provision, the principal effect of which will be to preserve the office of the incumbent Chief Justice, Judges, additional Judges and Master of the Supreme Court after the commencement of this Bill. Proposed section 29B provides that the enactment of this Bill will not affect the continuance of proceedings pending in the Supreme Court before the commencement of this Bill, or the operation or enforcement of a judgement or order entered, or made, before the commencement of this Bill.
Amendments to the Australian Capital Territory Supreme Court Act 1933

A new section 8AABA will be inserted into the Australian Capital Territory Supreme Court Act 1933 that will allow the Supreme Court to exercise jurisdiction in matters arising under the Administrative Appeals Tribunal Act 1989 of the ACT.

References
2. Ibid.
5. Ibid.
6. Ibid.
7. Ibid., p. 124.
8. Ibid.
9. Ibid., pp. 154-156.

Bills Digest Service
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For further information, if required, contact the Law and Government Group on 06 2772430.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.


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