

# EXPLANATORY STATEMENT

## Courts Legislation Amendment Bill 2019

SERIAL NO. 111

LEGISLATIVE ASSEMBLY OF THE  
NORTHERN TERRITORY

ATTORNEY-GENERAL AND MINISTER FOR JUSTICE

### GENERAL OUTLINE

The purpose of this Bill is to amend the *Administration and Probate Act 1969*, the *Electronic Transactions (Northern Territory) Regulations 2001*, the *Local Court Act 2015* and the *Supreme Court Act 1979* to provide for electronic filing and case management in the Supreme Court and Local Court.

### NOTES ON CLAUSES

#### **Part 1      Preliminary matters**

##### **Clause 1            Short title**

This is a formal clause which provides for the citation of the Bill. The Bill, when passed, may be cited as the *Courts Legislation Amendment Act 2019*.

##### **Clause 2            Commencement**

This is a formal clause which provides when the Act will commence. The Act will commence on the day after the day on which the Administrator give assent to the Bill.

**Part 2                      Amendment of the Administration and Probate Act  
1969**

**Clause 3                      Act amended**

This is a formal clause which provides that amendments are made to the *Administration and Probate Act 1969*.

**Clause 4                      Section 110A amended (Administration of small  
estate without representation or election)**

This clause amends section 110A(7) to specify that the requirement to deposit a Will with the Registrar may be exempted by the Court Rules. The intent of this amendment is to provide the Court with the ability to determine its own procedures relating to the provision of documentation electronically, including the provision of certain Will documents.

The Court is intending to make Rules for the electronic lodgement of documents in the near future.

This clause also takes the opportunity to make a number of grammatical amendments to section 110A to bring it into line with modern drafting practise.

**Clause 5                      Section 111 replaced**

This clause amends section 111(3) to specify that the requirement to produce or deposit a copy of the probate, administration or order with the Registrar may be exempted by the Court Rules. The intent of this amendment is to provide the Court with the ability to determine its own procedures relating to the provision of documentation electronically, including the provision of certain Will documents.

The Court is intending to make Rules for the electronic lodgement of documents in the near future.

This clause also takes the opportunity to redraft section 111, as the language and drafting of the existing section is archaic and difficult to interpret. The amendments bring it into line with modern drafting practise, without changing the intent of its operation.

#### **Clause 6                    Section 149 replaced**

This clause amends section 149 to specify that the requirement to deposit and preserve an original Will and other such other documents as the Court directs with the Registrar's office may be exempted by the Court Rules. The intent of this amendment it to provide the Court with the ability to determine its own procedures relating to the provision of documentation electronically, including the provision of certain Will documents.

The Court is intending to make Rules for the electronic lodgement of documents in the near future.

This clause also takes the opportunity to make a number of grammatical amendments to section 149 to bring it into line with modern drafting practise. The section has been replaced in order to simplify the redrafting that has taken place.

#### **Part 3                    Amendment of the Electronic Transactions (Northern Territory) Regulations 2001**

#### **Clause 7                    Regulations amended**

This is a formal clause which provides that amendments are made to the *Electronic Transactions (Northern Territory) Regulations 2001*.

## **Clause 8                      Regulation 5 inserted**

This clause inserts a new regulation 5 which provides that the requirements in sections 8(1)(b), 8(2)(b) and 9(1)(c) of the *Electronic Transactions (Northern Territory) Act 2000* do not apply to a requirement to give information (in the case of section 8) or a signature (in the case of section 9) in accordance with the Rules of the Supreme Court, the Local Court or the NT Civil and Administrative Tribunal (NTCAT).

The intent of this amendment is to enable the courts and NTCAT to require, within their respective Rules, that information and signatures may be provided electronically and that the consent of the person receiving that information or signature is not required for the purposes of the *Electronic Transactions (Northern Territory) Act 2000*. This is to enable the courts and NTCAT to electronically provide and serve documents and prevent the receiving party from rejecting that service by not consenting to being served electronically.

The courts are intending to make Rules for the electronic provision and service of documents in the near future. For the purpose of this new regulation, the rules of court will include any rules made by the NTCAT.

Normally, the *Electronic Transactions (Northern Territory) Act 2000* provides that a party must consent to a document being provided to them electronically, for that document to be effective. This change will enable the Rules to specify how documents are to be provided and remove the requirement for receiving parties to consent, thereby allowing the Rules to dictate how documents are to be provided.

**Part 4                      Amendment of the Local Court Act 2015**

**Clause 9                      Act amended**

This is a formal clause which provides that amendments are made to the *Local Court Act 2015*.

**Clause 10                      Section 26 amended (Court seal)**

This clause inserts a new section 26(6) which specifies that the court's seal and stamps may be applied to a document manually or electronically. This is intended to ensure that the court has the ability to use both manual and electronic seals and stamps, and continue the effectiveness of documents which may have been previously manually sealed or stamped, but which moving forward will be electronically sealed or stamped.

The provision is also drafted to ensure consistency between the courts and NTCAT, and more generally across the statute book.

**Clause 11                      Section 26A inserted**

This clause inserts a new section 26A which specifies that the Local Court, a Judge or a Registrar has the ability to issue or provide its documents electronically, as well as clarifying that any law of the Territory that permits or requires an order, judgment, process or other document to be issued or transmitted manually is also met if the document is issued or transmitted electronically.

This provision is modelled on an equivalent provision, section 24B of the *Supreme Court Act 1986* (Vic).

The intent of this clause is to enable the Local Court to have the ability to provide documentation via electronic means, irrespective of whether existing legislation may require that documents are to be provided manually. This is more expedient than examining and amending every provision within the statute book that may apply, and avoids the possibility of an errant provision being excluded from the intent of these amendments because it has been inadvertently overlooked.

As with the other amendments in the *Courts Legislation Amendment Act 2019*, the intent is for the Local Court to make its own rules, orders and processes to meet case-by-case situations relating to providing orders, judgments, processes or other documents electronically.

## **Part 5                      Amendment of Supreme Court Act 1979**

### **Clause 12                Act amended**

This is a formal clause which provides that amendments are made to the *Supreme Court Act 1979*.

### **Clause 13                Section 43 amended (Seal)**

This clause inserts a new section 43(4) which specifies that the Supreme Court's seal may be affixed to a document manually or electronically. This is intended to ensure that the court has the ability to use both a manual and electronic seal, and continue the effectiveness of documents which may have been previously manually sealed, but which moving forward will be electronically sealed.

The provision is also drafted in the same terms as the amendment to the *Local Court Act 2015* to ensure consistency between the courts and the NTCAT and more generally across the statute book.

This clause also takes the opportunity to make a number of grammatical amendments to section 43 to bring it into line with modern drafting practise.

**Clause 14            Section 44 amended (Stamps)**

This clause amends section 44(3) to specify that a Supreme Court stamp may be applied to a document manually or electronically. This is intended to ensure that the court has the ability to use both manual and electronic stamps, and continue the effectiveness of documents which may have been previously manually stamped, but which moving forward will be electronically stamped.

This clause also takes the opportunity to make a number of grammatical amendments to section 44 to bring it into line with modern drafting practise.

**Clause 15            Section 45 amended (Judicial notice of Seal)**

This clause amends section 45 to provide that judicial notice of a court seal is taken to include both manual and electronic seals.

This clause also takes the opportunity to make a number of grammatical amendments to section 45 to bring it into line with modern drafting practise and to rationalise the language of the section to sensibly refer to manual and electronic means of affixing a seal to a document.

## **Clause 16            Section 70 inserted**

This clause inserts a new section 70 which specifies that the Supreme Court, a Judge, an Associate Judge or a Registrar has the ability to issue or provide its documents electronically, as well as clarifying that any law of the Territory that permits or requires an order, judgment, process or other document to be issued or transmitted manually is also met if the document is issued or transmitted electronically.

This provision is modelled on an equivalent provision, section 24B of the *Supreme Court Act 1986* (Vic).

The intent of this clause is to enable the court to have the ability to provide documentation via electronic means, irrespective of whether existing legislation may require that documents are to be provided manually. This is more expedient than examining and amending every provision within the statute book that may apply, and avoids the possibility of an errant provision being excluded from the intent of these amendments because it has been inadvertently overlooked.

As with the other amendments in the *Courts Legislation Amendment Act 2019*, the intent is for the court to make its own rules, orders and processes to meet case-by-case situations relating to providing orders, judgments, processes or other documents electronically.

**Clause 17            Section 91 amended (Transitional matters for  
*Justice Legislation Amendment Act 2019*)**

This clause makes a minor technical correction to section 91 to correct an erroneous reference to the *Supreme Court (Judges Pensions) Act 1980*. The section currently incorrectly refers it as the Supreme Court (Judges Pensions) Act 1985. Otherwise, this amendment has no legislative impact.

**Part 6                Repeal of Act**

**Clause 17            Repeal of Act**

This is a standard clause which provides that the *Courts Legislation Amendment Act 2019* is repealed on the day after it commences.

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

Prepared in accordance with the Thirteenth Assembly Sessional Orders (part 12.3) as adopted on 24 August 2017.

### **Courts Legislation Amendment Bill 2019**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) and the International Covenant of Civil and Political Rights (ICCPR).

#### **OVERVIEW OF THE BILL**

The purpose of this Bill is to amend a number of pieces of legislation to provide for electronic filing and case management in the Supreme Court and Local Courts.

#### **HUMAN RIGHTS IMPLICATIONS**

This Bill does engage some of the applicable rights or freedoms.

*Article 14 – Equality before the courts and tribunals. Right to a fair trial.*

Article 14 of the ICCPR provides that all persons shall be equal before courts and tribunals, and in particular specifies that all persons are to have ‘...adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.’ (Article 14.3(b), ICCPR)

The proposed amendments could infringe upon Article 14, by requiring parties to provide and receive documents electronically to and from the courts in circumstances where that person may not have the capacity or means to do so. In particular indigent, homeless and transient persons may not have ready access to computers, scanners or similar equipment in order to enable them to comply with court processes requiring documents to be requested or provided via electronic means. This could result in an inequality for those persons before the court.

However, this has been considered and adequately addressed by the legislation, because the courts retain the ability to make individual orders on a case-by-case basis to dispense with particular filing and service requirements. In the event that a party might be unable to provide or receive documents electronically, the court may direct that the requirement be dispensed with for all or part of a particular matter or proceeding.

Overall, the transition to electronic filing and case management is expected to have a positive effect on access to justice, by speeding up the delivery of court papers, enhancing the recording, storage and retrieval of court documentation, and providing for contemporary, efficient access to court services in an increasingly digital world.

## **CONCLUSION**

This Bill is compatible with human rights as it does raise some human rights issues, but which have been considered in the drafting, which adequately addresses those issues.