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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.