

# DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

## *Criminal Code Amendment (Criminal Jurisdiction of the Associate Judge) Bill 2023*

*\*check Hansard for delivery\**

Mr Speaker, I move that the Bill now be read a second time.

This Bill makes a relatively small amendment to the *Criminal Code Act 1924 (the Criminal Code)* to allow the Chief Justice to issue a direction empowering the Associate Judge to exercise all of the powers of the Supreme Court in criminal proceedings, subject to a few specified exceptions.

However, this is nonetheless an important initiative, requested by the Chief Justice, to better utilise the capability of the Associate Judge's position to contribute to the efficiency of the criminal jurisdiction of the Supreme Court.

The effect of the amendment is the Chief Justice can arrange for the Associate Judge to exercise criminal jurisdiction, except for three areas the Chief Justice considers should be reserved for Judges. Those are specified in the Bill, being the conduct of a criminal trial, sentencing of crimes, and hearings of appeals in relation to bail.

The position of the Associate Judge was formerly known by the outdated term of the 'Master'. The first appointment to the 'Office of the Master' in the then Van Diemen's Land was in 1824. Since that time, the office has been abolished, and then revived, with the position now known as the 'Associate Judge'.

The purpose of the position has long been recognised as reducing the pressure on Judges, and expediting the hearing of chamber applications in the civil jurisdiction of the Supreme Court. Today, section 4 of the *Supreme Court Act 1959* establishes the position of the Associate Judge, who is appointed by the Governor in the same manner as the Judges of the Supreme Court.

The majority of the Associate Judge's workload takes place in the civil jurisdiction. The Associate Judge deals with interlocutory, or 'procedural', applications in civil matters before they come on for trial.

Rule 962 of the *Supreme Court Rules 2000* provides that the Associate Judge may exercise all of the powers of the Court which may be exercised by a single Judge sitting in chambers or by a single Judge sitting in Court without a jury, except for the hearing and determination of certain listed matters (such as applications under the *Judicial Review Act 2000*, or applications for admission to the legal profession).

Over the years, the role and jurisdiction of the Associate Judge have continued to expand, and powers can now be found in several pieces of legislation. Currently, section 418A of the *Criminal Code* provides the Associate Judge with some limited jurisdiction in respect of Court of Criminal Appeal matters. This jurisdiction is not altered by the Bill.

In addition to section 418A, section 5H of the *Supreme Court Act 1959* provides that the Associate Judge may exercise all of the functions, powers and authority of a magistrate. In practice, this power is not utilised regularly. However, from time to time, the Associate Judge has conducted preliminary proceedings in cases where it has been decided that a magistrate, rather than a justice of the peace, should preside over the proceedings.

Most jurisdictions in Australia provide for the role of the Associate Judge or Master, though their jurisdiction and powers differ to varying degrees. For example, in the Australian Capital Territory, the Associate Judge has had the power to hear bail applications since 2009, and the power to conduct pre-trial hearings since 2017. Pre-trial hearings involve the Associate Judge making rulings about the admissibility of evidence, with the evidence adduced at the hearing then becoming evidence in the trial before a judge.

I thank the Chief Justice for bringing this request forward, as part of ensuring the increased efforts of efficiency of the Supreme Court. It is a further evolution to the Associate Judge's role, and will make an important contribution to the Court's criminal jurisdiction.

In practice, this will allow the Chief Justice the discretion to empower the Associate Judge to exercise the powers of the Supreme Court for functions such as conducting case management of criminal matters, including dealing with directions hearings and mentions. The Bill's amendment deals with the business of the Supreme Court, while the current provision in section 418A for the Associate Judge powers in relation to the Court of Criminal Appeal is retained.

Enabling the Associate Judge to deal with the case management of criminal matters will increase the time available to the other Judges to hear criminal trials.

Our Government is pleased to progress this amendment, as one of the many steps we have taken towards reducing the criminal backlog in the Supreme Court.

I would also like to take this opportunity to pay particular tribute to our long-standing Associate Judge, Stephen Holt, who has recently advised of his retirement in September this year. Associate Judge Holt was appointed to the position of Master of the Supreme Court in 1999, and became Associate Judge in 2008 when the office was renamed. Prior to those roles, he was a past President of the Tasmanian Bar Association, and partner of the Hobart firm Murdoch Clarke. He is currently also a lecturer at the Centre for Legal Studies. I give my sincere thanks to Associate Judge Holt for over 20 years of tremendous service to the Court and the community, and wish him the very best for the future. Recruitment for the next Associate Judge is underway, and governed by the Protocol for Judicial Appointments.

Mr Speaker, I commend the Bill to the House.