

**MAGISTRATES COURT BILL 2003**

*Third Reading*

**MR J.A. MCGINTY** (Fremantle - Attorney General) [4.01 pm]: I move -

That the Bill be now read a third time.

**MR A.D. MARSHALL** (Dawesville) [4.01 pm]: Having analysed the Bill, I do not agree with it in its entirety. I find a couple of areas to be very upsetting to people with a conscience. I refer to schedule 1, clause 11 headed "Tenure of office", which reads -

A person ceases to be a magistrate -

(a) when he or she reaches 65 years of age;

An amendment was moved and defeated in earlier debate. I now add a personal involvement. Why do young people want to get rid of older people in our community? Older people have a lot to offer. They can offer wise counsel as experienced survivors of life. They make calm decisions. Older people have contacts to ring around in the city with similar experiences who can provide an alternative and balanced opinion from others who have been through life.

When I first looked at this clause, it struck me that exactly the same thing is happening with the parliamentary system. As soon as a member turns 65 years of age in this House, that person starts to lose \$30 000 a year from their retirement bulk sum, and they continue to pay \$15 000 a year into the scheme. Therefore, it is costing \$45 000 a year for any member of Parliament aged 65 years to stay here. When a parliamentary season comes to a close, people approaching 65 years of age leave - I refer to those who have given the House good experience and value as a politician. Members know that I am retiring at the end of this year. I have never seen myself as a professional politician, but I see myself as a person who knows right from wrong and a good decision maker. Until all the so-called candidates came to see me so that I could train them on what to expect as a member of Parliament, I did not realise how good I was!

This clause will force experienced people - young people do not realise how good these people are - to make room for younger people to be appointed to judge other people and apply experience in their work. I do not like it. In the mid 1950s, the world was governed by people over 80 years of age. I refer to Eisenhower, Stalin, de Gaulle and Churchill. The young backbenchers opposite laugh.

Mr M.P. Whitely: Stalin! I thought Stalin was an interesting choice, that's all.

Mr A.D. MARSHALL: At the age of 80 years and more, those were the leaders of four of the largest countries of the world. We will put up in lights the fact that the member for Roleystone criticised those aged over 80 years who governed the world in the 1950s. How about John Tonkin, son? He was Premier of this State when aged 70 years. The member has no respect for his elders. The member for Roleystone went to, and taught at, Christ Church Grammar School, and I am ashamed of the attitude he displays in this House at times. He is a young whippersnapper who is wet behind the ears. It is time the member listened and learnt. John Tonkin and Sir Charles Court ran this State with great distinction when aged in their 70s.

I relate to members a story concerning Harry Hopman. When aged 70, Harry Hopman lost his job at a New York tennis centre. The owner was a multimillionaire who made his fortune, I believe, through soap. He liked his name in lights, so he got the leading tennis coach from Australia to coach at his centre. The centre started to be known as "The Hopman Centre", and the multimillionaire was ruffled that this older chap was getting the glamour from his investment. Therefore, he retired Hopman when aged 70. Harry Hopman went to Tampa, Florida and coached on four courts, which was a minor role for a man of his distinction.

Mr J.C. Kobelke: This Bill is about the Magistrates Court, not tennis courts.

Mr A.D. MARSHALL: Listen to this, Leader of the House - it is a very important story.

Fortunately for Harry Hopman, a golf club with two 18-hole courses was in Tampa Florida with a three-storey clubhouse containing two restaurants. It was an established and wonderful golf centre. They asked Hopman whether he would put in 40 tennis courts around which condominiums could be built. Four years later, almost aged 75 years, the Hopman tennis centre in America was the largest tennis centre in the world. It drew players from all over the world like bees to honey - players like McEnroe, McNamee, McNamara, Lewis from New Zealand and Gerulaitis.

Mr J.C. Kobelke: I never saw them in the Magistrates Court!

Mr Jim McGinty; Mr Arthur Marshall; Mrs Cheryl Edwardes; Ms Sue Walker; Mr Tony McRae; Deputy  
Speaker

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Mr A.D. MARSHALL: Harry Hopman was the key. I am talking to clause 11, young fella, which refers to dismissing magistrates when aged 65 years. I thoroughly disagree with that provision.

It might be said that the cases I have outlined are exceptions, but they are not exceptions. Look through the world of art, academia and sport. Look at our parliamentary system. The member for South Perth is a perfect example of such a learned person. He is retiring because of the money he would lose if he stayed here when aged 65 years. He has so much experience that he will become a historian of this place. He has knowledge unknown by younger members like the members for Mandurah, Roleystone and Eyre who may not be here next term - they do not know their destination. The member for South Perth has been through all experiences and knows the thrill of competing in elections.

Mr J.C. Kobelke: Is your commitment to heritage bringing back Shave and Keirath?

Mr A.D. MARSHALL: They are not over 65, are they - or am I mistaken?

Mr J.C. Kobelke: I think they should be heritage listed, though.

Mr A.D. MARSHALL: Leader of the House, I am talking about people aged over 65.

In conclusion, this clause should leave it to a person to judge himself or herself. It should not be compulsory for people to be told to leave their role; it should be up to the individual. If the fire has gone out in someone who is 65 years or over, by all means he should retire. If the fire has gone out physically - for instance, there is a bit of dementia, a bit of carelessness, a bit of slackness and a lack of stamina, and the enjoyment of the job has gone - by all means that person should retire. I would think that a magistrate, who is trained to be fair and honest, would assess himself. If he had a doubt, he would ask his partner or wife, "How am I going? Am I slipping a bit?" and he would be told by an honest companion, "Yes, your days are up. It is time you gave it away." It should not be a decision of Parliament to judge a 65-year-old. If a magistrate is alert, energetic, experienced, learned, fair, physically fit and still looks forward to going to work, which is the number one criterion, he or she should be allowed to do so.

In conclusion, I remind the House, which comprises a huge majority of young people, that it takes a lot of experience in life to understand the feelings of older people. In Mandurah, which has a huge number of retirees, we have just started tapping into the experience of those people. They have an enormous amount of energy and intellect to offer to the community on a voluntary basis. While magistrates are employed and have those attributes I just mentioned, but, more importantly, while they enjoy going to work and their reputation is still intact, there is no reason to have a clause such as clause 11 of schedule 1, "Tenure of office", which states that when they reach the age of 65, they are out. Anyone who is bold enough to judge a person in the community in that way should have another look in the mirror and say, "Wrong, wrong, wrong. That clause should have been amended, and the Attorney General has made one heck of a mistake."

**MRS C.L. EDWARDES** (Kingsley) [4.11 pm]: I rise to support the member for Dawesville. We raised this issue in the second reading debate as well as in consideration in detail. Indeed, we moved an amendment to increase the age of retirement of magistrates to 70, to make it comparable with that of judges of the District Court and the Supreme Court. We can change the magistrate's title to "Your Honour", but we cannot make the age of retirement of magistrates the same as that of judges. I believe the Attorney General is clearly wrong on this. The Attorney General has said that the Government will not change that now; it might consider it at a later stage. However, the Government could change it now quite easily. The Attorney General has said that a lot of other people are willing to take on those jobs. That would not deny them that opportunity. However, the fact is that we must retain the valuable experience that has been gained by magistrates in delivering justice to the majority of men and women who come into contact with the justice system in Western Australia. The Magistrates Court does the most work and comes into contact with more people than any other court in this State. It travels the furthest and operates in more regional areas than any of the superior courts. The fact that those magistrates who are getting close to retirement age will be denied the opportunity to continue to carry out their duties will impact upon the people of Western Australia.

I echo the views that have been expressed. I hope the Attorney General understands that we vehemently believe that the suspension and subsequent dismissal of a magistrate for those two key reasons of incompetence or non-compliance with the directions of the Chief Magistrate, as well as a direction by the minister to attend and be examined by a medical panel, are absolutely abhorrent. That will extend the attack on the independence of the judiciary. We are in 2004. What was appropriate back in 1957 needs to be rethought. With all the other legislation that the Attorney General has introduced to this Parliament, he has claimed to be a man of vision.

Mr J.A. McGinty: I'm allowed one discriminatory piece, aren't I?

Mr Jim McGinty; Mr Arthur Marshall; Mrs Cheryl Edwardes; Ms Sue Walker; Mr Tony McRae; Deputy  
Speaker

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Mrs C.L. EDWARDES: No, the Attorney General is not allowed one discriminatory piece. Before this legislation goes through both Houses of the Parliament, he has an opportunity to rethink his position on those two key areas. He should seriously reconsider the age of retirement and the fact that non-compliance with a direction is a proper reason for suspension and dismissal. He should also reconsider the provision that the minister may direct that the magistrate appear before a medical panel. That is clearly an extension of the Law Reform Commission's recommendation. There has been no support for it. As such, we would ask the Attorney to reconsider those matters before this legislation goes through the Parliament.

**MS S.E. WALKER** (Nedlands) [4.15 pm]: I was not going to speak, but I have been absolutely inspired by the member for Dawesville.

Mrs C.L. Edwardes: There is still fire there, isn't there?

Ms S.E. WALKER: I agree. I have seen more action from the member for Dawesville than I have seen from a lot of people on the other side of this House. I have shared an office with the member for Dawesville, and with the member for Kingsley. I can tell the House that the member for Dawesville is a stunning operator when it comes to being a politician - more so than these wafflers on the other side. The Attorney General and the Minister for Consumer and Employment Protection, who laughs when he gives his speech, look 65, but they are not.

Several members interjected.

Ms S.E. WALKER: I am being light-hearted. Members should not be so touchy and precious. Come on; it is Thursday afternoon; calm down.

*Point of Order*

Mr A.D. McRAE: My point of order relates to relevance. I fail to understand how the member for Nedlands' continuing personal attacks, which are part of her modus operandi, have anything to do with the debate on this Bill. I ask that you direct her to keep her comments relevant to the debate, Madam Deputy Speaker.

The DEPUTY SPEAKER: There is no point of order. There was light-hearted banter, which sometimes happens when interjections go beyond what they should. I call the attention of the member for Nedlands to the third reading debate.

Ms S.E. WALKER: I thank you, Madam Deputy Speaker, for protecting me from the member for Riverton, who called me a cry-baby. I ask: where is the code of conduct.

The DEPUTY SPEAKER: The member for Nedlands should not push her luck. She should deal with the Bill.

*Debate Resumed*

Ms S.E. WALKER: I will be serious, because this is a serious Bill. We hoped we could persuade the Attorney General to change his position. In my view, he has been belligerent about this Bill. I agree that the Attorney General is a man of vision - other people's visions. Every vision that he has brought into the Assembly is the Liberal Party's vision, left over from when it was in government, and this is an example of it. This was a 1988 Law Reform Commission vision that was progressed by the former Attorney General. As usual, it has been brought into this House by the current Attorney General, who is riding on the back of the previous Government's efficiency.

The problem with the Magistrates Court Bill is that it is extremely faulty - a bit like the Attorney General and the Minister for Consumer and Employment Protection, who are sitting there like two old men on the park bench in the afternoon sun. In all seriousness, the point is that justices of the peace are able to work until they are 70 or 75 years of age, with the approval of the Attorney General. District Court and Supreme Court judges can work until they are 70. I am not sure until what age Federal Court and High Court judges can work, but I imagine it is the same. The point is that the only people who the Attorney General feels, in a patronising way, he must protect from their own work ethic are stipendiary magistrates who are appointed under the Stipendiary Magistrates Act.

There are many issues with this Bill. I do not know why the Stipendiary Magistrates Act is being repealed and subsumed into the Magistrates Court Bill. It will place more controls on magistrates. In my view, the Attorney General has absolutely no confidence in the Chief Magistrate in carrying out his workload and exercising his leadership. Magistrates are the only ones who can be carted off, as people were in the days of old - which the Attorney General is always protesting about - after a medical examination has been imposed upon them. It is absolutely ludicrous. What if the Speaker were to introduce rules that meant we could all be medically examined and assessed to see whether we could be members of Parliament?

Mrs C.L. Edwardes interjected.

Mr Jim McGinty; Mr Arthur Marshall; Mrs Cheryl Edwardes; Ms Sue Walker; Mr Tony McRae; Deputy Speaker

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Ms S.E. WALKER: A few members might have to go to the lunatic asylum.

This is the thin end of the wedge in an attack on the independence of the judiciary in this State. I agree with the member for Dawesville, which is why the amendment was moved to make the age of magistrates uniform with that of District Court judges. I also moved an amendment to protect the independence of the judiciary. It should not be that the Attorney General can now extend and control the way in which a magistrate can be suspended and the magistrate's appointment ultimately terminated. My amendment was to delete all those shockingly archaic provisions and those new provisions, but retain the provision in the Stipendiary Magistrates Act that is in line with the District Court of Western Australia Act. That failed.

With regard to the commission and the emphasis in the legislation on the administrative functions of magistrates, the whole Bill is set to demean magistrates and bring them under the control of the Attorney General. It is a shocking piece of legislation. I am sorry that the Attorney General has not re-examined those provisions, although he may be forced to once the Bill is introduced into the upper House. We cannot support the Bill.

Question put and a division taken with the following result -

Ayes (28)

Mr P.W. Andrews	Mr J.N. Hyde	Ms S.M. McHale	Ms J.A. Radisich
Mr C.M. Brown	Mr J.C. Kobelke	Mr A.D. McRae	Mr E.S. Ripper
Mr A.J. Carpenter	Mr R.C. Kucera	Mr N.R. Marlborough	Mrs M.H. Roberts
Dr E. Constable	Mr F.M. Logan	Mrs C.A. Martin	Mr D.A. Templeman
Mr J.B. D'Orazio	Ms A.J. MacTiernan	Mr M.P. Murray	Mr P.B. Watson
Dr J.M. Edwards	Mr J.A. McGinty	Mr A.P. O'Gorman	Mr M.P. Whitely
Dr G.I. Gallop	Mr M. McGowan	Mr P.G. Pandal	Ms M.M. Quirk ( <i>Teller</i> )

Noes (20)

Mr R.A. Ainsworth	Mr J.H.D. Day	Mr M.G. House	Mr P.D. Omodei
Mr C.J. Barnett	Mrs C.L. Edwardes	Mr R.F. Johnson	Mr T.K. Waldron
Mr D.F. Barron-Sullivan	Mr J.P.D. Edwards	Mr W.J. McNee	Ms S.E. Walker
Mr M.J. Birney	Mr B.J. Grylls	Mr A.D. Marshall	Dr J.M. Woollard
Mr M.F. Board	Ms K. Hodson-Thomas	Mr B.K. Masters	Mr J.L. Bradshaw ( <i>Teller</i> )

Question thus passed.

Bill read a third time and transmitted to the Council.