

COURTS LEGISLATION AMENDMENT BILL 2017

First Reading

Bill read a first time, on motion by **Mr J.R. Quigley (Attorney General)**.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [12.09 pm]: I move —

That the bill be now read a second time.

The Courts Legislation Amendment Bill 2017 makes amendments to the Civil Judgments Enforcement Act 2004, the Western Australian Magistrates Court Act 2004 and the Western Australian Supreme Court Act 1935. The bill seeks to increase the mandatory retirement age for magistrates from 65 to 70 years of age. Currently, magistrates are required to retire when they reach 65 years of age. Western Australia and South Australia are the only jurisdictions to place this limit on magistrates, with the retirement age across Australia otherwise being 70 or 72. The only mechanism to extend a magistrate's period of service to 70 years is if he or she is appointed as an acting magistrate upon retiring from a tenured position. To some extent, this has been regarded as a demeaning title for an experienced magistrate, and the break in tenure has detrimental consequences for accrued annual leave, sick leave, and superannuation entitlements. The abolition of the retirement age disparity between magistrates and judges would acknowledge and reflect the changed nature of the office of magistrates as part of the independent judiciary. Increasing the retirement age for magistrates will bring the Magistrates Court Act 2004 in line with the District Court of Western Australia Act 1969 and the Judges' Retirement Act 1937, which require judges of the District and Supreme Courts to retire at the age of 70.

The bill as first introduced provided that a qualified person may be appointed as an acting magistrate for any duration but not beyond the proposed new retirement age of 70. The bill was introduced in the other place and passed that place with amendments to the commencement clause and to the provisions that provide for the appointment of acting magistrates. The acting magistrate provisions as contained in the current version of the bill provide that a qualified person may be appointed as an acting magistrate for a period of no more than 12 months, but this can be extended in blocks of no more than 12 months at a time. The current bill also provides that any person who meets the qualifications for appointment as a magistrate can be appointed as an acting magistrate if they are a retired magistrate under 70, or are beyond the retirement age of 70 but are otherwise qualified.

I note that the amendments to the acting magistrate provisions were opposed by the government in the other place. Despite this, given that it was the will of the other place that the amendment be included, the government accepted the policy intention of amended clause 8 of the bill. However, advice from Parliamentary Counsel's Office is that clause 8 is at risk of not achieving the policy intention. With that advice in mind, I foreshadow that I will seek to move an amendment to clause 8 during the consideration in detail stage.

The bill also seeks to make amendments in regard to two technical matters. It amends the Civil Judgments Enforcement Act 2004 to explicitly state that the power under the act to make regulations includes the power to prescribe fees in respect of the registration of judgments under the commonwealth's Service and Execution of Process Act 1992. The Service and Execution of Process Act 1992 provides at section 105(1) that upon lodgement of a sealed copy of a judgment with the registrar of a court in a state other than the place of rendition, the judgment must be registered. A registered judgment has the same force and effect as if the judgment had been made by the court in which it is registered. In such circumstances in Western Australia, enforcement of a civil judgment is governed by provisions of the Civil Judgments Enforcement Act 2004. The Civil Judgments Enforcement Regulations 2005 prescribe a fee for registering judgments from other jurisdictions pursuant to section 105(1) of the Service and Execution of Process Act 1992, but an anomaly has been identified where the Civil Judgments Enforcement Act 2004 does not specifically authorise the imposition of a fee for registering a judgment in a court under section 105(1) of the Service and Execution of Process Act 1992. Part 2 of the bill corrects that anomaly by adding explicit conferral for registering a judgment under the Service and Execution of Process Act 1992. For the information of honourable members, I confirm that the provision also provides for the retrospective validation for such fees already demanded and paid prior to this explicit authorisation.

Finally, the bill amends the Supreme Court Act 1935 to remove an outdated and unnecessary provision. Section 31 of that act is deleted by clause 11 of the bill because there is no longer any need for a specific distinction between interest for the loan of money or other contracts and interest in other proceedings for debts and damages.

I commend the bill to the house.

Debate adjourned, on motion by **Ms L. Mettam**.