

COURTS LEGISLATION AMENDMENT BILL 2017

EXPLANATORY MEMORANDUM

Overview of the Bill

The Courts Legislation Amendment Bill 2017 makes amendments to the *Civil Judgments Enforcement Act 2004* (WA), *Magistrates Court Act 2004* (WA), and *Supreme Court Act 1935* (WA).

The Bill seeks to increase the mandatory retirement age for magistrates from 65 to 70 years of age.

The Bill also amends the *Civil Judgments Enforcement Act 2004* to explicitly state that the power under that Act to make regulations includes the power to prescribe fees in respect of the registration of judgments under the *Service and Execution of Process Act 1992* (Cth).

Part 1: Preliminary

Clause 1. Short title

Clause 1 provides that the Bill, once enacted, will be known as the *Courts Legislation Amendment Act 2017*.

Clause 2. Commencement

This clause provides for the commencement of the Act.

Sections 1 and 2 will come into operation on the day on which the Act receives Royal Assent. The rest of the Act will commence on the day after that day.

Part 2: *Civil Judgments Enforcement Act 2004* amended

Clause 3. Act amended

This clause provides that this Part will amend the *Civil Judgments Enforcement Act 2004*.

Clause 4. Section 120 amended

Section 120 provides that regulations may provide for or prescribe fees in respect of or in connection with any proceedings under the *Civil Judgments Enforcement Act 2004*.

Clause 4 of the Bill inserts a proposed section 120(3) to provide the authority for the imposition of a fee to register judgments under section 105(1) of the *Service and Execution of Process Act 1992* (Cth).

Clause 5. Section 122 inserted

Clause 5 inserts a new section 122 at the end of Part 8 of the *Civil Judgments Enforcement Act 2004*.

The proposed new section 122 provides validation to any fee to register judgments under the *Service and Execution of Process Act 1992* (Cth) that has already been demanded and paid prior to the commencement of the amendment contemplated at clause 4 of this Bill.

Part 3: *Magistrates Court Act 2004* amended

Clause 6. Act amended

This clause provides that this Part will amend the *Magistrates Court Act 2004*.

Clause 7. Schedule 1 clause 2 amended

Clause 7 replaces the age of 65 in Schedule 1 clause 2(2)(b) with the age of 70. Through this change to the maximum age requirement for qualification for appointment as a magistrate, a magistrate's retirement age is effectively increased to 70.

Clause 8. Schedule 1 clause 9 amended

Clause 8 of the Bill makes a number of amendments to Schedule 1 clause 9 to provide for additional categories of persons who may be appointed as an acting magistrate and to provide time limits on the length of all acting magistrate appointments.

Clause 9(2)(b) is replaced with a new provision which provides that a person who would, but for the fact that they have reached the age of 70, be qualified to be appointed as a magistrate or an acting magistrate, may be appointed as an acting magistrate.

Clause 8 also inserts a new clause 9(2)(c) to refer to a person who is a retired magistrate who has not yet reached the age of 70 as being a person who may be appointed as an acting magistrate.

Clause 8 adds the following phrase to clause 9: "for such period not exceeding 12 months as is specified in that instrument". This provision clarifies that all acting magistrate appointments may not exceed 12 months, subject to extension under the new clause 9(3A) mentioned below.

Clause 9(3) of Schedule 1 is amended to delete the words "but the period must not extend beyond when the appointee reaches 70 years of age" from clause 9(3)(a). This is to reflect that the appointment of an acting magistrate may extend beyond the person reaching 70.

Finally, clause 8 of the Bill inserts a new clause 9(3A) to Schedule 1 to provide that an appointment of an acting magistrate may be extended by the Governor for a further period, or periods, of up to 12 months at a time. This allows for multiple short term extensions of an acting magistrate's appointment.

Clause 9. Schedule 1 clause 11 amended

Clause 9 of the Bill amends Schedule 1 clause 11 to reflect that a person ceases to be a magistrate when he or she reaches 70 years of age.

Part 4: *Supreme Court Act 1935* amended

Clause 10. Act amended

This clause provides that this Act will amend the *Supreme Court Act 1935*.

Clause 11. Section 31 deleted

This clause deletes section 31 as 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.