

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.

Part 1 comes into operation on the day on which the Act receives Royal Assent. The rest of the Act will come into operation on a day fixed by proclamation, and different days may be fixed for different provisions.

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 deletes all reference to the age of a person as there are no age qualification differences between magistrates and acting magistrates, and provides that a person who qualifies under Schedule 1 clause 2 may be appointed by the Governor as an acting magistrate.

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.