

## COURTS LEGISLATION AMENDMENT BILL 2012

### EXPLANATORY MEMORANDUM

#### OUTLINE

This Bill amends the *Criminal Procedure Act 2004* (WA) and the *Magistrates Court (Civil Proceedings) Act 2004* (WA).

The amendments to the *Criminal Procedure Act 2004* (WA) will provide that a registrar will be able to deal with many preliminary aspects of a criminal matter short of making findings that should be reserved to a judicial officer.

The matters reserved to a judicial officer are:

- making findings of guilt or innocence;
- discharging an accused from a charge;
- consenting to the discontinuance of a charge;
- staying a prosecution;
- setting aside a committal; or
- making a finding of contempt.

The amendments to section 40 of the *Magistrates Court (Civil Proceedings) Act 2004* (WA) will clarify the power of the District Court to extend the time limit to appeal to the District Court against decisions of the Magistrates Court.

The Bill makes it clear that the relevant court can extend time to appeal and will allow for case management in criminal matters freeing judges for judicial duties.

At present the Act provides that an appeal must be made within 21 days of decision. There is no mention in the Act of a power to extend the time. There are conflicting decisions of the District Court as to whether there is any power to extend time to appeal.

The amendment makes it clear that the Court can extend time to appeal. The appeal must be conducted in accordance with the rules of the court.

For consistency a similar amendment is made to section 42 of the *Magistrates Court (Civil Proceedings) Act 2004* (WA) relating to appeals from the District Court to the Court of Appeal. That is there is a power in the Court of Appeal to extend time.

## NOTES ON CLAUSES

### Part 1 - Preliminary

#### Clause 1: Short title

Clause 1 provides that when enacted the short title of the Act will be the *Courts Legislation Amendment Act 2012*.

#### Clause 2: Commencement

Clause 2 provides that the operative parts of the Act come into force on proclamation.

### Part 2 – *Criminal Procedure Act 2004* amended

#### Clause 3: Act amended

Clause 3 provides that this Part amends the *Criminal Procedure Act 2004*.

#### Clause 4. Section 124 amended

Subclause (1) of clause 4 deletes the existing subsection 124(5)(a) of the *Criminal Procedure Act 2004* (WA) and inserts a new subsection 124(5)(a). Section 124 provides that rules of court may be made that apply to the Magistrates Court. Subsection 124(5)(a) presently provide that the rules of court may confer on a registrar power to deal with matters that do not involve a final determination of a matter. The proposed new subsection 124(5)(a) will provide that the rules may allow for the delegation to the registrar all the powers of a judicial officer except the power to:

- make findings of guilt or innocence;
- discharge an accused from a charge;
- consent to the discontinuance of a charge;
- stay a prosecution;
- set aside a committal; or
- make a finding of contempt.

Subclause (2) of clause 4 inserts new subsections (6), (7), (8) and (9) into section 124. The new subsections will authorise an appeal against a decision of a registrar. The appeal cannot be commenced more than 21 days after the original decision without the leave of the court. The appeal must be conducted according to the rules of the court and is by way of a new hearing.

**Part 3 – Magistrates Court (Civil Proceedings) Act 2004 amended**

**Clause 5. Act amended**

Clause 5 provides that this Part amends the *Magistrates Court (Civil Proceedings) Act 2004*.

**Clause 6. Section 40 inserted**

Clause 6 deletes the existing section 40(3) of the *Magistrates Court (Civil Proceedings) Act 2004* (WA) and inserts two new subsections. At present subsection (3) provides that an appeal against a decision of the Magistrates Court to the District Court must be commenced within 21 days of the decision and conducted in accordance with the rules of the District Court.

Proposed new subsection (3) will provide that an appeal must be commenced within 21 days but adds words allowing for an appeal outside that time if the District court gives leave. Proposed new subsection (4A) provides that the appeal must be made in accordance with the rules of the District Court.

**Clause 7. Section 42 amended**

Clause 7 provides similar rules for appeals from the District Court to the Court of Appeal as made in relation to section 40. The clause provides for the deletion of the existing section 42(2) of the *Magistrates Court (Civil Proceedings) Act 2004* (WA) and inserts two new subsections. At present subsection (2) provides that an appeal against a decision of the District Court to the Court of Appeal must be commenced within 21 days of the decision and conducted in accordance with the rules of the Supreme Court.

Proposed new subsection (2) will provide that an appeal must be commenced within 21 days but adds words allowing for an appeal outside that time if the District court gives leave. Proposed new subsection (3A) provides that the appeal must be made in accordance with the rules of the Supreme Court.