NOTES FOR THE AMENDMENT TO CLAUSE 8
COURTS LEGISLATION AMENDMENT BILL 2017

This Bill has been returned to us from the other place with an amendment to Clause 8. Members will recall that Clause 8 was originally amended here during Committee of the Whole in August, to provide for the appointment of acting magistrates beyond the age of 70.

I understand the Attorney General has been in contact with Hon Alison Xamon as the mover of the original amendment to advise her of the reasons behind the amended Clause 8 we are dealing with today.

Clause 8 as amended in this place was loosely modelled on the provisions for appointment of auxiliary judges in the Supreme Court Act 1935 (WA) and the District Court of Western Australia Act 1969 (WA). It provided that a qualified person may only be appointed as an acting magistrate for a period of no more than 12 months, but that this could be extended in blocks of no more than 12 months at a time.

The previous Clause 8 went on to provide that any person who met the qualifications for appointment as a magistrate could be appointed as an acting magistrate, even if they had retired or were beyond the retirement age of 70.

Parliamentary Counsel identified a substantive issue which may inadvertently undermine the policy intention and it was determined that a replacement Clause 8 should be inserted into the Bill while it was considered in the other place.

The intended policy is that any person who meets the qualification in clause 2(2)(a) (that is, 5 years' legal experience) is eligible to be appointed as an acting magistrate. Proposed clause 9(2)(c) of the Act in the former Clause 8 was at the very least unnecessary as it was covered by existing clause 9(2)(a). There was also a risk that, in order to give some meaning to clause 9(2)(c) of the Act, it would be interpreted as limiting the scope of clause 9(2)(a) so as to prevent retired magistrates over 70 years of age from being appointed as acting magistrates.

The amended Clause 8 we are dealing with now clarifies that a person qualified under clause 2(2)(a) of Schedule 1 to the Magistrates Court Act 2004 (WA) may be appointed as an acting magistrate for discrete periods of 12 months at a time, no matter their age. At the same time, some small drafting improvements have also been made by this amendment such as using simpler, more contemporary language.

The policy intention remains the same.