

SECOND READING SPEECH

COURTS LEGISLATION AMENDMENT BILL 2017

I move this Bill be read a second time.

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. 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 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 requires judges of the District and Supreme Courts to retire at the age of 70.

The Bill also seeks to make amendments in regard to two technical matters.

The Bill 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 to the registration of judgments under the *Service and Execution of Process Act 1992* (Cth).

The *Service and Execution of Process Act 1992* (Cth) 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* (Cth), 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* (Cth). Part 2 of the Bill corrects that anomaly by adding explicit conferral, and providing validation for fees already demanded and paid, for registering a judgment under the *Service and Execution of Process Act 1992* (Cth).

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 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.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation Bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the Government of the State is a party; nor does this Bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the Commonwealth.

I commend the Bill to the House.