

**COURTS LEGISLATION AMENDMENT BILL 2017**

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Matthew Swinbourn) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

**Postponed clause 8: Schedule 1 clause 9 amended —**

Resumed from an earlier stage of the sitting on the amendment moved by Hon Alison Xamon.

**Hon ALISON XAMON:** In relation to my amendment 1/8, I seek leave to substitute the words to be inserted with the following words as contained in supplementary notice paper 23, issue 4.

**Amendment (insertion of words), by leave, withdrawn.**

**Hon ALISON XAMON:** I move —

Page 5, in place of deleted lines 10 to 15 — To substitute —

- (1) In Schedule 1 clause 9(2) delete paragraphs (b) and (c) and insert:
  - (b) a person who would, but for the fact that he or she has attained the age referred to in clause 2(2)(b), be qualified to be appointed a magistrate or an acting magistrate; or
  - (c) a person who is a retired magistrate but has not yet attained 70 years of age, for such period not exceeding 12 months as is specified in that instrument.
- (2) In Schedule 1 clause 9(3) delete “but the period must not extend beyond when the appointee reaches 70 years of age;”.
- (3) In Schedule 1 insert after clause 9(3):
  - (3A) An appointment under clause 9(2) may be extended by the Governor by instrument for a further period or periods, but that appointment can only be extended on any one occasion for such period not exceeding 12 months as is specified in the relevant instrument.

**Hon SUE ELLERY:** The government remains opposed to the amendment, but I appreciate the efforts by the honourable member and the Clerks to make sure that it is structurally correct.

**Amendment (insertion of words) put and passed.**

**Clause, as amended, put and passed.**

**Clauses 9 and 10 put and passed.**

**Clause 11: Section 31 deleted —**

**Hon MICHAEL MISCHIN:** As I raised in my second reading contribution, I was interested in putting on the record the reasoning behind section 31 of the Supreme Court Act 1935 being now otiose or redundant, its operations having been subsumed by some other provisions in that legislation. I simply ask that the minister put on the record what is filling the place of section 31 and operating more effectively or why it is otherwise redundant. I understand the minister has obtained a fairly lengthy response. I know we are running short of time today and she may not be able to present that verbally. If that is the case, I am happy to have it tabled and perhaps incorporated into *Hansard* and any refinements to grammar that might seem neat before it is published so that it is on the record and available for members of the other place and the public in due course to understand the government’s thinking in that regard.

**Hon SUE ELLERY:** In the break I was provided with some information about the removal of section 31. The practical effect of the removal is that the award of interest by a state court in cases that were covered by section 31(2) will now be dealt with under the usual interest award provisions of the relevant court for pre-judgement interest. I have some detail on that. As the honourable member has suggested, I seek leave to table the response and have it incorporated into *Hansard*.

Leave granted. [See paper 1706.]

The following material was incorporated —

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**Courts Jurisdiction Bill - Removal of s31 of the Supreme Court Act 1935**

**Operation of section:**

**Extract from Hansard**  
[COUNCIL — Thursday, 30 August 2018]  
p5451a-5452a

Hon Alison Xamon; Hon Michael Mischin; Hon Sue Ellery

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Section 31 generally related to the freedom to contract regarding the rate of interest. Subsection (1) which was repealed in 2010, confirmed that subject to consumer law, there was no limit to interest that a person could lawfully contract to pay.

S31 (2) currently provides for a 6% cap on the interest that can be awarded by any State court where the interest that is being sought arises out of a loan of money or another contract and where the interest has not been agreed upon between the parties. Subsection (2) has its origins in the law against usury (which is the practice of lending money at unreasonably high interest rates). The general premises behind the provision is fairness; the intention has always been to give a judgment creditor a fair rate of interest.

**Effect of removal:**

The practical effect of the removal is that the award of interest by any State court in cases that were covered by section 31 (2) would now be dealt with under the usual interest award provisions of the relevant court for pre judgment interest, and I will provide some detail on that shortly.

By way of background it is important to note that the award of interest is an integral element in the attainment of the object of damages, namely, to compensate a plaintiff for injury sustained. Hence the award of pre-judgment interest is compensatory in character. It could also be argued that statutory provisions for interest serve not only that purpose, but also a purpose of encouraging early resolution of litigation.

The policy is that while a guide is provided to the courts, the courts should retain discretion to take into account the interests of justice. The court could, for example, consider the conduct of the parties and the appropriate compensation in the circumstances of the case.

Taking into account these factors I mentioned: fair compensation to a plaintiff, the necessity of discretion and providing a guide to courts; there is no longer a need for a specific distinction between interest for the loan of money or other contracts, as against interest in any other proceedings for debts and damages - the same factors apply to all these cases. The legal advice obtained was that this section could be repealed.

The effect of the proposed deletion of s31(2) will be that pre-judgment interest would be determined in accordance with the legislation for the applicable jurisdiction. Where matters are pending before the court then s31(2) will no longer apply at the date of proclamation of the deletion.

So for example, if interest under a contract has not been agreed and is to be considered by the Supreme Court then section 32 of the *Supreme Court Act 1935* (WA) would apply.

Order 36, Rule 20 of the *Rules of the Supreme Court 1971* (WA) provides that when calculating interest for the purpose of s32 of the Supreme Court Act 'the Court may use, as a guide, the rate of interest prescribed from time to time for the purposes of section 8 of the *Civil Judgments Enforcement Act 2004* (WA)'. The section 8 rate at present is 6% per annum. Therefore, section 32 gives the Court discretion in relation to awarding interest. However, this discretion is guided by reference to the fixed rate of 6%.

**Other:**

The *Magistrates Court (Civil Proceedings) Act 2004* (WA) contains similar provisions in relation to pre-judgment interest to those in the Supreme Court Act. These are contained within section 12 of that Act which provides amongst other things, that if the Court gives judgment in favour of a claim for money, including a debt, damages or the value of goods, it may include in the judgment sum interest, at a rate decided by the Court, on the whole or a part of the money for the whole or a part of the period.

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**Clause put and passed.**

**Title put and passed.**

*Report*

Bill reported, with amendments, and, by leave, the report adopted.

*As to Third Reading — Standing Orders Suspension — Motion*

On motion without notice by **Hon Sue Ellery (Leader of the House)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

*Third Reading*

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and transmitted to the Assembly.