

1991

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY LAW AMENDMENT BILL (NO 2) 1991

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Honourable
Michael Duffy, Attorney-General)



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OUTLINE

The Family Law Amendment Bill (No 2) 1991 gives effect to the recommendation of the first report of the Joint Select Committee on Certain Aspects of the Operation and Interpretation of the Family Law Act that the Family Law Act 1975 be amended to fix a maximum retiring age of 70 years for Family Court judges.

The Bill will amend the Family Law Act 1975 by repealing the provision fixing the maximum age for Family Court judges at 65 years. The Bill will also amend paragraph 41(4)(b) of the Act to provide that the Governor-General may make a proclamation under subsection 41(2) declaring that the provisions of the Family Law Act apply to proceedings in the State Family Court, if the Governor-General is satisfied that judges appointed to the State Family Court cannot hold office beyond the age of 70 years.

FINANCIAL IMPACT STATEMENT

The amendments are revenue neutral. If a judge remains on the Court beyond age 65 he or she will continue to receive a full judicial salary. There could be offsetting savings in the payment of judicial pensions as and when judges retire, as the number of years of payment of judicial pension will be reduced by the number of additional years service as a judge.

NOTES ON CLAUSES

Clause 1 - Short Title

1. This clause sets out the short title to the Bill and defines the Principal Act as the Family Law Act 1975.

Clause 2 - Commencement

2. This clause provides that the Act is to commence on the day that it receives Royal Assent.

Clause 3 - Maximum Age for Judges

3. This clause repeals section 23A of the Principal Act. Section 23A provides that, for the purposes of section 72 of the Constitution, the age of 65 is fixed as the maximum age for Judges. The repeal of section 23A means that future appointments to the Court will be governed by section 72 of the Constitution which provides that, subject to any law fixing a lesser age, the maximum age for federal judges is 70 years.

Clause 4 - Establishment of State Family Courts

4. This clause amends paragraph 41(4)(b) of the Principal Act by increasing the age beyond which a judge appointed to a State Family Court cannot hold office, from 65 to 70 years.
5. This amendment will allow the Governor-General to make a proclamation under section 41 in relation to

a State Family Court whose judges have a maximum age which is the same as judges of the Family Court of Australia. Only Western Australia has established a State Family Court.