

## **Courts Legislation (Amendment) Bill 2011**

### **EXPLANATORY MEMORANDUM**

The *Courts Legislation (Amendment) Bill 2011* is a Bill for an Act to amend the *Courts Act 1972* and the *Family Court Act 1973* to provide for sitting fees for members of the Family Court and magistrates, even if they are public officers

#### **BACKGROUND**

The *Courts Act 1972* provides for the payment to lay magistrates of such fees and allowances as the Minister may direct by *Gazette* notice. Similarly, the *Family Court Act 1973* provides for the payment to Family Court members of such fees and allowances as the Minister may direct by *Gazette* notice. However payment may not be made where the lay magistrate or the Family Court member is also a public officer.

The District Court and the Family Court both need motivated and educated people to occupy positions as lay magistrates and Family Court members. Often, the most suitable candidates for such positions will hold another public office of some kind, and public servants currently hold office as lay magistrates and members of the Family Court. For the District Court in particular it is desirable that the Clerk of Court (a public officer) also be appointed as a lay magistrate. The Clerk of Court is familiar with Court procedures and can assist the other lay magistrates in this respect.

The prohibition on paying sitting fees to lay magistrates and Family Court members who are public officers constitutes an undesirable disincentive to public officers to hold such positions.

#### **Explanation of clauses**

**Clauses 1 and 2** provide for the short title and commencement of the Act.

**Clauses 3** enables the Schedule, which amends the *Courts Act 1972* and the *Family Court Act 1973*.

#### **SCHEDULE**

##### **Part 1 – *Courts Act 1972***

The *Courts Act 1972* is amended to remove the prohibition on paying fees and allowances to magistrates who are public officers. However, the amended provision specifies that the resident magistrate is not entitled to such fees and allowances – this is because the resident magistrate draws a full-time salary for the position.

##### **Part 2 – *Family Court Act 1973***

The *Family Court Act 1973* is amended to remove the prohibition on paying fees and allowances to members of the Court who are public officers. However, the amended provision specifies that the resident magistrate is not entitled to such fees and allowances – this is because the resident magistrate draws a full-time salary for the position.

The Act is also amended to replace the definition of ***‘member’***, which inaccurately referred to persons appointed under section 4 – in fact, section 4 provides both for the appointment of members and for the membership (without specific appointment) of the resident magistrate.