Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Citizenship, Minister for Regulatory Reform, and Vice-President of the Executive Council) [11.27 a.m.]: I move:

That this bill be now read a second time.

The purpose of the Courts Legislation Amendment Bill 2010 is to make miscellaneous amendments to legislation affecting the operation of the courts and tribunals of New South Wales. The bill is part of the Government's regular legislative review and monitoring program and will amend a number of Acts to improve the efficiency of the operation of our courts and tribunals. I will now outline each of the amendments in turn.

In relation to the Administrative Decisions Tribunal Act 1997, item [1.1] in schedule 1 to the bill makes three amendments to the Administrative Decisions Tribunal Act 1997. First, it amends section 24A to enable matters relating to cost and jurisdiction to be dealt with by a single judicial member of the tribunal at first instance, or by a single presidential member on appeal. Costs and jurisdictions are matters that frequently arise in proceedings that in the tribunal are currently dealt with by three-member panels. These matters are typically narrow questions and can be readily dealt with by a single judicial or presidential member. The tribunal can deal with these matters more efficiently and at less cost by allowing the matters to be dealt with by a single member.

Secondly, the bill amends section 73 of the Act, which relates to the tribunal's power to dismiss an application if the applicant fails to appear. The amendment clarifies that there is a time limit of 28 days for applications for reinstatement of proceedings dismissed under section 73. This time limit can be extended with the tribunal's permission. Thirdly, the bill amends schedule 2, part 1, clause 3, which relates to the constitution of the panel of the tribunal's community services division to hear applications under the Community Services (Complaints, Review and Monitoring) Act 1993.

The bill will remove the requirement that one of the members be a "practising legal practitioner" and replace it with "a judicial member". Currently the provision disqualifies some of the tribunal's most senior members, including some judges and magistrates, as it requires that one of the panel members is a "practising legal practitioner". It also disqualifies experienced judicial members who do not hold a current practising certificate. By replacing "practising legal practitioner" with "judicial member" the provision will become consistent with the rest of the Administrative Decisions Tribunal Act. It will also remove the current restrictions on the tribunal's ability to empanel a three-member panel to hear applications under section 28. The amendments are supported by the president of the tribunal.

Schedule 1.2 to the bill amends section 65 of the Children and Young Persons (Care and Protection) Act 1998 to support the increased use of alternative dispute resolution in care proceedings in the Children's Court. This is consistent with the recommendations arising from the Special Commission of Inquiry into Child Protection Services in New South Wales, otherwise known as the Wood inquiry. The Wood inquiry made a specific recommendation that alternative dispute resolution should be used more—both before and during care proceedings. The Government's response to the Wood inquiry supported this recommendation. This bill will rename "preliminary conferences" in the Act to "dispute resolution conferences". The bill will emphasise that the primary purpose of a dispute resolution conference is the resolution of disputes and that, specifically, the conference should provide the parties with the opportunity to agree on the action that should be taken in the best interests of the child. The confidentiality of the dispute resolution conference process is also expressly guaranteed under the bill. Schedule 1.3 to the bill makes a consequential amendment to the Children and Young Persons (Care and Protection) Regulation 2000 to reflect the renaming of the "preliminary conference" to "dispute resolution conference".

Schedule 1.4 to the bill amends the Children (Criminal Proceedings) Act 1987 to enable the Children's Court to call on an offender, on its own motion, who has failed to comply with a condition of a probation order, or a good behaviour bond, or a condition of an outcome plan determined at a conference. Currently the Children's Court can only deal with a breach by an offender of a previous court order when the police prosecutor or a Juvenile Justice officer brings it to the attention of the court. On receiving the information, the court can then issue a court attendance notice or an arrest warrant for that offender. The power for the court to call on an offender who fails to comply with a good behaviour bond already exists in adult courts. There is no policy basis for the different treatment of juvenile offenders in this regard.

Schedule 1.5 to the bill amends section 6A of the Children's Court Act 1987 to allow the President of the Children's Court to sit on the District Court. The President of the Children's Court must be a District Court judge but under the current provisions the President is prevented from sitting as a District Court judge while holding the office of the President of the Children's Court. There are benefits to allowing the President to sit on the District Court. The President can maintain relevant skills and knowledge for when he or she returns to the District Court at the end of his appointment. The President can also bring to the District Court an expertise in care matters and other related matters. Further, the ability to continue to sit occasionally in the District Court could be an incentive

for future District Court judges to agree to an appointment as President for the full five-year term. It is intended that the President will sit on the District Court only in limited circumstances and, in particular, only where there is no adverse impact on the workload of the Children's Court. This amendment is supported by both the Chief Magistrate and the Chief Judge of the District Court.

Schedule 1.6 to the bill makes amendments to the Civil Liability Act 2002. Firstly, it amends part 2A to provide that, in an action against a protected defendant for the award of personal injury damages where the act or omission that caused the injury or death was a tort—whether or not negligence—of a person for whose tort the protected defendant is vicariously liable, a court cannot award exemplary or punitive damages or damages in the nature of aggravated damages. This amendment ensures that offenders in custody are treated the same way as other citizens under the Act, who are unable to obtain exemplary, punitive or aggravated damages for personal injuries in negligence actions, or in actions in tort—whether or not for negligence—against a person who is vicariously liable for the tort of another. Secondly, the bill amends part 2A to allow a court to determine claims under part 2A "on the papers", that is, without conducting a hearing. If the court is satisfied that the interests of justice require otherwise then a hearing will be held in the presence of parties. The intention for not holding a hearing is to minimise trauma and expense for victims. New section 26X is inserted.

Schedule 1.7 to the bill amends section part 9 of the Civil Procedure Act 2005 to allow proceedings to be transferred between the Supreme Court and the Industrial Court in appropriate circumstances. This amendment is the first of three amendments contained in the bill identified by the Industrial Relations Commission to, firstly, assist its transition to the Uniform Civil Rule regime, which began in the Industrial Relations Commission earlier this year, and, secondly, assist in transferring the jurisdiction of the Chief Industrial Magistrate to the Industrial Court. In practice, such transfers are not likely to occur often, but the provisions will provide a formal mechanism for this to occur.

Schedule 1.8 to the bill amends schedule 1 of the Criminal Procedure Act 1986 to increase the maximum property value for break and enter offences, dealt with summarily by the Local Court under chapter 5 of the Criminal Procedure Act 1986, from $15,000 to $60,000. The current limit has remained unchanged for more than 20 years and does not reflect the proper relationship between the seriousness of the crime and the sentencing level. This issue was considered by the Sentencing Council as part of a reference the Government made in December 2010 asking the council to examine the relative merits of increasing the sentencing powers of the Local Court. The Sentencing Council recommended the increase, highlighting in its letter of support that it will:

> ensure the continued disposal of appropriate break and enter offences in the Local Court, with the concomitant benefits in terms of the efficient allocation of resources.

The Chief Magistrate and Chief Judge of the District Court also support the amendment. Schedules 1.9 and 1.13 to the bill amend the District Court Act 1973 and the Local Court Act 2007 to allow a Chief Magistrate to also hold a commission as a District Court judge. This will enable a District Court judge to be appointed as Chief Magistrate while continuing to hold a commission as a District Court judge. It will also enable anyone who has been appointed as Chief Magistrate to also be appointed as a District Court judge. The provisions will enable a Chief Magistrate who is also a District Court judge to exercise the jurisdiction of the District Court if requested by the Chief Judge of the District Court, but not in relation to an appeal from any decision made by the Chief Magistrate in his or her capacity as a member of the Local Court. This reform recognises the significance of the Local Court within the New South Wales court system and the important leadership role of the Chief Magistrate. Affording the status of District Court judge on the Chief Magistrate is another step in the evolution of the Local Court and will further enhance its standing.

Schedule 1.10 to the bill amends the Industrial Relations Act 1996 to allow the President of the Industrial Court to authorise the Industrial Registrar or another officer to exercise criminal and non-civil functions. This is the second amendment requested by the Industrial Relations Commission to assist its transition to the Uniform Civil Rules regime. It appears this amendment was overlooked in earlier amendments incorporating the provisions of the Civil Procedure Act into the Industrial Relations Act. Schedules 1.11 and 1.14 to the bill amend the Land and Environment Court 1979 and the Supreme Court Act 1970 respectively to allow Supreme Court judges to act as Land and Environment Court judges, and vice versa.

An arrangement may take place for a given period or for particular proceedings with the consent of the judge in question and his or her head of jurisdiction and the certification of the other head of jurisdiction that to do so is expedient. This will help ensure greater flexibility in the operation of the courts and builds on provisions in the Civil Procedure Act 2005 allowing the transfer of proceedings between the Land and Environment Court and the Supreme Court, as the circumstances require. The amendments may also reduce the need for acting judges by enabling each court to utilise judges available in the other court. Finally, it will encourage the sharing and transfer of expertise, knowledge and skills between these two courts, which will benefit the judicial officers, court users and the court system at large.

Schedule 1.12 to the bill makes two amendments to the Legal Profession Act 2004. The first amendment inserts a new section 302B to provide that the goods and services tax [GST] referable to the provision of legal services is to be taken into account when making or reviewing a determination of the legal costs payable for the provision

of those services. This amendment aims to address the recent Court of Appeal decision in *Boyce v Mcintyre*. This amendment will extend to any application for the assessment of costs made, but not determined, before the commencement of the section. However, it will not extend to any application for a review of, or an appeal against, an assessment of costs by a costs assessor if it was determined by the costs assessor before the commencement. The Law Society of New South Wales and the New South Wales Bar Association have been consulted in the development of this amendment.

The second amendment in schedule 1.12 is the third and final amendment requested by the Industrial Relations Commission. It amends section 329 of the Act to allow for fixed costs in the Industrial Court for small claims matters. This amendment is designed to limit professional costs that can be recovered for small claims matters under the Industrial Relations Act 1996. This is to ensure that when the Chief Industrial Magistrate jurisdiction is transferred to the Industrial Court, parties will not be subject to a higher costs regime than previously existed in the Chief Industrial Magistrate jurisdiction. Schedule 1.15 to the bill amends section 80 of the Victims Support and Rehabilitation Act 1996 to correct an error in the formula used to adjust the victims compensation levy for increases in the consumer price index. The amendment will apply only to levies imposed after 1 July this year.

The bill addresses a number of issues relating to the smooth and effective running of courts and tribunals in New South Wales. The amendments contained in the bill have been the subject of thorough consultation with key stakeholders, including the Chief Justice of the Supreme Court, the Chief Judge of the District Court, the Chief Magistrate, the President of the Industrial Relations Commission, the Law Society of New South Wales and the New South Wales Bar Association. I commend the bill to the House.