Courts Legislation Amendment Bill.

Second Reading

Mr NEVILLE NEWELL (Tweed—Parliamentary Secretary) [10.00 a.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time

This bill makes miscellaneous amendments to legislation affecting the operation of the courts of New South Wales. Schedule 1 to the bill amends the Children (Criminal Proceedings) Act 1987 to remove the requirement for a child under bond to notify the court of a change of address. A similar amendment was made in 2001 for adult bonds, as the provision was thought to be superfluous and of no practical utility. This amendment arises from work that is being carried out by the CourtLink project, the new case management system for the Supreme Court, the District Court and the Local Court, including the Children's Court and the Coroner's Court.

The CourtLink project has presented the opportunity to review and streamline processes in each of the jurisdictions and to build commonality in how business is conducted across the jurisdictions. Having common, streamlined processes will make it easier for court staff and external users to operate the CourtLink system. When staff examined the requirements applying to adult and children's bonds, it became apparent that there was no benefit in retaining the additional requirement in relation to children's bonds. Schedule 2 to the bill amends the Commercial Arbitration Act 1984 by way of statute law revision following clause 45 of schedule 8 to the Legal Profession Act 1987. That clause provides that a reference in any Act to the taxation of costs is taken to be a reference to the assessment of costs under the Legal Profession Act. The clause did not, however, actually amend the Acts that refer to taxation of costs.

Sections 34 and 35 of the Commercial Arbitration Act still refer to taxation of costs and this has been confusing for some people who are unaware of clause 45 of schedule 8 to the Legal Profession Act. Schedule 2 also amends sections 34 and 35 to remove the references to taxation of costs and replace them with references to assessment of costs. It will also introduce a new section 35 to make it clear that the provisions in the Legal Profession Act relating to costs assessment with any necessary modifications apply to sections 34 and 35. Schedule 3 to the bill amends the Crimes (Local Courts Appeal and Review) Act 2001 to allow an appeal to the District Court where a matter is heard in the defendant's absence, and allow the District Court to order that the case be heard in the Local Court.

Currently, when a person charged with a criminal offence in the Local Court does not appear, the matter can be dealt with in his or her absence. When this occurs, a right to seek a rehearing of the matter exists under section 4 of the Crimes (Local Courts Appeal and Review Act) 2001. However, if this application for rehearing is refused, the only recourse for the defendant is to appeal to the District Court. This current process uses the District Court's valuable time and resources, and deprives the defendant of any right to appeal from the finding. If this subsequent application to the District Court is granted, there must be a complete hearing of all evidence in the District Court. To overcome this, the proposed amendment clarifies in section 11A that a right of appeal from the decision of the magistrate to refuse a rehearing be allowed to the District Court, and that the District Court be granted the ability to order a full hearing in the Local Court. The amendment allows only one appeal to the District Court from the Local Court.

Schedule 4 to the bill amends the Crimes (Sentencing Procedure) Act 1999 to remove references to forms being prescribed by the regulations. Instead, the regulation-making power under the Act will be amended so that the regulations can make provision for the information that is to be contained in any document under the Act; and require documents to be in a form that is approved by the Minister. The regulations will also make provision for how a document is to be served. The transitional arrangements will allow existing forms, or forms to the effect of the existing forms, to be used until the new forms are approved.

These amendments arise as a result of other work that was carried out on the CourtLink project. Last year, a working party of judicial officers, representatives from the court registries and the department designed new, simpler forms to replace the large number of forms currently being produced by the courts in criminal cases. The new forms will be progressively approved for use in the Supreme Court, the District and the Local Court as CourtLink is rolled out to these courts. Schedule 4 also amends section 86 of the Act, which currently provides that a community service order may not be made with respect to an offender unless the court is satisfied that the offender has signed an undertaking, in the form prescribed by the regulations, to comply with the offender's obligations under the community service order.

Requiring the offender to sign the undertaking before the court has made the order is problematic, as it requires the offender to undertake to comply with the conditions of the community service order even before the offender is aware of those conditions. In practice, the offender does not sign the undertaking before the order is made but instead signs it in the registry after the court has made the order. The amendment will require the offender to sign the undertaking to comply with his or her obligations under the community service order after the court has made the order. If the offender refuses to sign the undertaking, the matter will be remitted back to the judicial officer who will be able to vacate the

order and re-sentence the offender.

Schedule 5 to the bill amends the Criminal Appeal Act 1912 to enable documents relating to an appeal also to be lodged with either the registrar of the Court of Criminal Appeal, or the registrar of the trial court. Appellants who are in custody still can lodge their appeal documentation with the person in charge of the place where the person is in custody. Appeal documentation from the Drug Court and the Land and Environment Court will continue to be lodged only with the registrar of the Court of Criminal Appeal.

The changes to the lodgment process are not intended to cut down the important roles of the current court registries in managing cases through to hearing. Registries responsible for appellate work will receive early notice of the lodgment of an appeal and will be able to manage a case immediately thereafter. The existing arrangements for lodging appeals from the Drug Court and the Land and Environment Court will be retained, as these courts will not be part of the CourtLink system.

Schedule 6 amends the Criminal Procedure (Justices and Local Courts) Act 1986 to clarify that a registrar can grant an extension for lodgment of a court attendance notice, and that both a magistrate and a registrar can grant an extension outside the initial seven-day period. Currently, sections 52 and 117 of the Criminal Procedure (Justices and Local Courts) Act 1986 require that court attendance notices be filed at the registry within seven days after service on the defendant. The section was originally inserted to ensure that documents were filed in court sufficiently ahead of the hearing date. Under the legislation, a registrar is unable to grant an extension to this seven-day period. The amendment to section 52 allows a registrar to grant an extension. In addition, the bill amends section 177 (5) so that both a magistrate and a registrar can grant an extension after the seven-day period has expired.

Schedule 6 further amends the Criminal Procedure Act 1986 to remove any ambiguity that a police officer cannot issue a subpoena under the Criminal Procedure Act. The Crown Solicitor's Office recently noted some conflicting legal argument that suggested that a police officer might not be able to issue a subpoena. To put this beyond doubt, this suggested amendment changes sections 222 and 224 to clarify that a police officer can issue a subpoena. Additionally, section 218 will be amended so that police officers will not be personally liable for any costs incurred.

Schedule 7 amends the District Court Act 1973 to create the position of Judicial Registrar. The Judicial Registrar will have the power to hear and determine notices of motion to finality, and will exercise the following functions and powers: preside as a master of the District Court to facilitate orderly and expeditious discharge of cases; maintain close, confidential liaison with the judiciary in providing and seeking specialist legal procedural advice and assistance; conduct callovers, status conferences, pre-trial conferences, show cause hearings and directions hearings, both in person and by telephone; consider applications for adjournment from hearing and arbitration listings; allocate cases to judges for case management; assist as required with the case management of the specialist lists; hear and determine notices of motion; provide advice and assistance on case management; and refer appropriate matters to arbitration and mediation.

The position will be a statutory appointment for a term not exceeding five years. Proposed section 18FA states that the Judicial Registrar must be admitted as a legal practitioner to any court of a State or Territory or of the High Court. The Judicial Registrar must also devote his or her whole time to the office, and is to be an officer of the District Court. In addition, section 18G changes the current name of the registrar for Sydney to the Principal Registrar. Under proposed 18J the Principal Registrar may exercise all of the functions of the Principal Registrar. This will bring the District Court in line with a similar provision in the Supreme Court. It is proposed that schedule 7 further amend the District Court Act to complete the transition of compensation jurisdiction to that court.

The proposed amendment gives the District Court the same powers as the Compensation Court through proposed section 142I. The residual jurisdiction is that which was exercised by the Compensation Court under a range of New South Wales legislation. When exercising the residual jurisdiction the District Court does not need to follow strict legal precedent, but must decide cases on their merits as provided by section 142J. Additionally, a residual jurisdiction decision can be appealed from the District Court to the Court of Appeal only in limited circumstances under proposed section 124N, but the District Court is able to reconsider its own decisions. Additionally, proposed section 124K provides that section 112 of the Workplace Injury Management and Workers Compensation Act 1998 applies to all proceedings of the residual jurisdiction in the District Court. Under proposed section 142P the District Court can also refer a matter to WorkCover for an inquiry or report.

Schedule 8 amends the Jury Act 1977 to remove references to forms being prescribed by the regulations. Instead, the regulation-making power under the Act will be amended so that regulations can make provision for the information that is to be contained in any document under the Act and to require documents to be in a form that is approved by the Minister. The regulations will also be able to make provision for how a document is to be served. The transitional arrangements will allow existing forms to be used until the new forms are approved. These amendments reflect the changes that are being made to the Crimes (Sentencing Procedure) Act 1999 in schedule 4 to this bill.

Schedule 9 amends the Protected Estates Act 1983 to allow the Protective Commissioner to direct third-party managers. Prior to the introduction of the Guardianship and Protected Estates Legislation Amendment Act 2002 the Protective Commissioner was able to make orders for third-party managers regarding all functions necessary for management and care of property, and order that property be sold to satisfy debts and make orders for the management and administration of protected persons' property. The Protective Commissioner is currently able to

exercise these powers only in relation to estates directly administered. However, these functions cannot be exercised over third party managers without a court order. This arrangement has increased the workload for both the commissioner and the court.

The amendment to section 30 will allow the manager to exercise all functions necessary and incidental to the management of an estate, and such other functions as the Protective Commissioner may direct. However, the commissioner in proposed section 30 (b) is given the power to make directions on management of an estate. The exercise of these powers will be reviewable by the Administrative Decisions Tribunal. All schedules will commence on assent except for schedule 5, which is expected to commence in mid-2004 when CourtLink is implemented in a number of District Court registries. These amendments improve the efficiency of the courts and provide an improved and more accessible service for legal practitioners and the public. I commend this bill to the House.