



Legislative Council

Courts Legislation Further

Amendment Bill Hansard - Extract

04/09/2002

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.16 p.m.]: I move:

That this bill be now read a second time.

This bill proposes miscellaneous amendments to legislation affecting the operation of the courts of New South Wales. Firstly, it is proposed to amend the Liquor Act 1982 to provide for licensing magistrates who are acting magistrates to be paid on a daily basis, in accordance with the terms of their commissions, rather than under the Statutory and Other Offices Remuneration Act 1975. Acting magistrates are paid a daily rate. Accordingly, if an acting magistrate is not sitting, he or she is not paid. A number of acting magistrates currently hold commissions as licensing magistrates under section 8 of the Liquor Act. The Liquor Act does not presently provide for licensing magistrates who are acting magistrates to be paid on a daily basis. A consequential amendment to the Statutory and Other Offices Remuneration Act is proposed to exclude from schedule 1 acting magistrates who are licensing magistrates.

It is also proposed to amend the Local Courts Act in relation to leave entitlements for magistrates. Pursuant to section 25 of the Local Courts Act, appointees as magistrates who are public servants at the time of the appointment preserve their accrued long service, sick leave and recreation leave entitlements. The section also preserves superannuation entitlements. However, there is no proposal to alter this aspect of the section. The existing determination of magistrates' leave and related provisions defines "service", for the purpose of calculating these entitlements, as including periods of service under the Public Sector Management Act. Under those amendments, any public servants appointed in future as magistrates would be paid out all extended and recreation leave entitlements at the time of their resignation from the Public Service, as they would if they were resigning from any other position, and there will be no right to carry forward sick leave entitlements from previous service as a public servant.

The proposed amendment to the Supreme Court Act 1970 would remove the present restriction on long and complex matters being referred to arbitration. Parties engage in time-consuming argument about the length and complexity of their matters rather than focusing on the substantive aspects of the case that may or may not make it suitable for arbitration. This amendment will bring the arbitration provisions of the Supreme Court Act 1970 into line with those applying in the District Court and Local Court, which were amended to achieve this result last year. Also, minor technical amendments are required to facilitate the introduction of electronic filing of applications in class 1, 2, 3 and 4 matters in the Land and Environment Court.

Provisions in the legislation dealing with the signing, sealing or stamping of process need to be addressed, and will be supplemented by changes to the court rules to permit the court to deal with electronic filings. The amendments contain a provision validating anything done under the electronic filing system after 1 July and prior to these amendments commencing. Finally, the bill was amended by the Government in the Legislative Assembly. This amendment pertains to the Local Courts Act 1982 to enable a judge of the District Court to be appointed to the present vacancy in the office of Chief Magistrate of the Local Court and to retain all remuneration, leave, pension and other entitlements of a District Court judge.

A District Court judge is qualified for appointment as Chief Magistrate because he or she is, or is eligible to be, admitted as a solicitor or barrister of the Supreme Court of New South Wales. However, the doctrine of incompatibility of office would preclude a District Court judge from holding both appointments simultaneously without specific legislative authority. This amendment provides that the District Court judge may retain his or her commission as District Court judge and all of the corresponding rights and entitlements, but the judge will not exercise the jurisdiction of the District Court. An exception is made to permit the judge to finish off any matters currently before him or her. I commend the bill to the House.