



## Courts Legislation Amendment Bill.

### Second Reading

**The Hon. HENRY TSANG** [Parliamentary Secretary] [9.24 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

#### Leave granted.

This bill provides for miscellaneous amendments to legislation affecting the operation of the courts of New South Wales. Schedule 1 amends section 68 of the Crimes (Local Court Appeal and Review) Act 2001 to clarify that a District Court judge has the power to take into account any suspension, driving or non-driving period, when setting a commencement date for a person's driving licence suspension after an unsuccessful appeal from a Local Court conviction. If the appeal to the District Court is unsuccessful, and the disqualification period imposed by the Local Court is confirmed, District Court judges are unclear as to their power to vary the commencement date to take into account any suspension imposed when the offence was committed, or any driving or non-driving period between the Local Court hearing and the District Court appeal. The amendment clarifies that District Court judges have a discretion to vary the commencement date for a person's licence suspension after an unsuccessful appeal.

The Justices Legislation Repeal and Amendment Act 2001 repealed the Justices Act 1902. The change clarified the duties undertaken by "justices" working in court registries and substituted the term "registrar", which more correctly describes the administrative and quasi-judicial nature of the work. In section 284 of the Criminal Procedure Act 1986 the term "justice" was replaced with "judge". The Criminal Procedure Act 1986 previously provided that, if it appears to a "justice" that a person who is able to give material information about an indictable offence is dangerously ill and the person's evidence will probably be lost if not immediately taken, the justice may take the deposition in the same way as if a prosecution were then pending before the court. The effect of the changed wording has been to limit the range of persons empowered to take the depositions of dangerously ill persons. This poses difficulties when magistrates are not available on an urgent basis, particularly in rural circuit court areas where the same magistrate sits in several geographically remote courts. Important evidence may be lost if a person dies before it is possible to take a deposition.

Schedule 2 amends the Criminal Procedure Act 1986 to restore the power to take depositions from dangerously ill adults to court staff who were previously able to perform the task. Schedule 3 amends the District Court Act 1973 by extending the number of locations where the District Court may sit. At present the District Court may only sit at "proclaimed places," which are locations that have been gazetted in the New South Wales *Government Gazette*. The amendment allows the court to conduct sittings at venues that are closer to where parties and witnesses live, and where the cause of action arose. It allows the court to arrange special sittings in rural or remote locations, where there are sufficient cases, most likely utilising a Local Court.

Schedule 4 amends sections 153 and 164 of the Industrial Relations Act 1996 to enable a single judge rather than the full bench—usually made up of three judges—to make an order to commence contempt proceedings pursuant to rule 237 of the Industrial Relations Commission Rules 1996. No change is proposed to the requirements that a full bench hears the actual proceedings for contempt. The amendments to the statute allow a single judge to order the commencement of contempt proceedings. This is consistent with the manner in which the Supreme Court may commence contempt proceedings.

Schedule 4 also makes two amendments to the Industrial Relations Act 1996 regarding the Industrial Relations Commission's power to make orders prohibiting the publication of the names of persons—and any other details that may identify such persons—involved in proceedings before the commission. Such orders are called non-publication orders. It amends the Industrial Relations Act 1996 to confirm that the Industrial Relations Commission has the power to make non-publication orders at any time, where it is necessary for the proper administration of justice. The need for non-publication orders is especially important in Child Protection (Prohibited Employment) Act 1998 cases to protect the identity of individuals alleged to have been convicted of a "serious sex offence", the employer, such as a school, and/or other associates, such as a teacher's former students.

Schedule 5 amends the Jury Act 1977 to make it clear that a court may make an order for the separation of the jury after it retires even if it is not present when the order is made. By "separate" I am referring to the jury finishing for the day and leaving the court or jury room. This amendment prevents the delays and inconvenience caused by moving the jury backwards and forwards from the courtroom to the jury room. Schedule 5 also amends the Jury Act by increasing the penalty for disclosing the identity or address of a juror or any information likely to lead to the identification of a juror or former juror in a trial or inquest. The current maximum penalty is a fine of 50 penalty units for a corporation and 20

penalty units for a person. This is grossly inadequate as a sufficient disincentive to discourage publication and protect the identity of jurors. A penalty unit is currently set at \$110.

The amendment increases the penalty for a breach of section 68 (1) in line with comparable provisions in other Australian jurisdictions. It is proposed to increase the penalty provisions in section 68(1) of the Jury Act 1977 by providing a fine of \$250,000 in the case of a corporation and two years imprisonment or an equivalent fine—approximately 50 penalty units or \$6,500—in the case of an individual. It is an integral and essential principle of the criminal justice system that the anonymity of jurors be preserved. Women and men who are called upon to perform this important task should be able to do so without fear, interference or harassment. It is imperative that jurors have confidence in the ability of the justice system to protect them. Increasing the penalty for disclosing information about jurors will strengthen the protection afforded to them by recognising the serious nature of the offence and providing appropriate punishment and deterrent.

Schedule 6 amends the Local Courts (Civil Claims) Act 1970 to increase the jurisdictional limit of the general division of the Local Court from \$40,000 to \$60,000. There has been no increase in the jurisdictional limit of the Local Court since it was last adjusted in 1991. The jurisdiction of the District Court has twice increased during this time: to \$250,000 in 1995 and to \$750,000 in 1998. The District Court has also assumed unlimited jurisdiction in respect of motor accident claims. Taking into account consumer price index increases and the rise of average weekly earnings, the limit of the Local Court has significantly diminished in real terms over the past 12 years. The Local Court sits in 156 locations throughout the State, making it accessible to urban dwellers as well as people living in the most remote areas of the State. The Local Court provides a cheaper, quicker, simpler and more accessible forum for resolving civil disputes.

A series of practice notes introduced 12 months ago by the former Chief Magistrate has seen more matters being dealt with more quickly in the court's general division. The gradually diminishing limit of the jurisdiction has forced rural litigants to travel further to access District Court registries and sittings, and forced those with limited means to pay the higher fees that are applicable in the District Court for a relatively small dispute—one that in 1992 would have been capable of being dealt with in the Local Court. This adjustment will restore the value of the jurisdiction to what was intended in 1991, enhancing the services provided by the Local Court, particularly for rural litigants.

Schedule 6 also amends the Local Courts (Civil Claims) Act 1970 to correct the reference to the Property Stock and Business Agents Act 2002. The Auctioneers and Agents Act 1941, referred to in section 59A (1) (a) of the Local Courts (Civil Claims) Act 1970, has been replaced by the Property Stock and Business Agents Act 2002. This proposal updates the name of the legislation in the current Act. Schedule 7 amends the Oaths Act 1900 to provide barristers with the same authority that solicitors have under section 27 (1) to witness statutory declarations and swear affidavits. Section 27 (1) of the Oaths Act 1900 provides that a solicitor shall, except in so far as the Chief Justice of the Supreme Court by order otherwise directs, be authorised to take and receive affidavits concerning any matter within the jurisdiction of a court or required for the purpose of registering an instrument in New South Wales. Schedule 7 replaces the term "solicitor" with "legal practitioner", allowing barristers to perform these tasks.

Schedule 8 amends Part 7B of the Supreme Court Act 1970, which deals with referrals to early neutral evaluation. In early neutral evaluation, an impartial evaluator assists the parties to identify the issues in dispute, assesses the strengths and weaknesses of each party's case, and gives an opinion as to the likely decision of the court. The process is not a form of dispute resolution but is designed more to help crystallise the issues in dispute between the parties. Modern case management techniques adopted by the court achieve a similar objective. The amendments to sections 110H through to 110Q remove any reference to the process of early neutral evaluation, as it has not been useful in the Supreme Court because litigants generally have legal representation and have received advice on their prospects of success. Mediation, on the other hand, is useful as an alternate means of dispute resolution that has widespread acceptance among practitioners and parties.

Schedule 8 also amends section 110O of the Supreme Court Act 1970 to improve the mechanism by which mediators are appointed. The Chief Justice currently compiles a list of persons solely on the nominations of professional associations. This list becomes the panel from which mediators are appointed. The new provision allows the Chief Justice to issue a practice note providing a protocol for the nomination and appointment of mediators. Schedule 8 also amends section 110R to retain the same exoneration from liability that mediators and evaluators have under the current system. These amendments will improve the efficiency of the courts and provide an improved and more accessible service for legal practitioners and the public. I commend the bill to the House.

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