Courts and Other Legislation Amendment Bill 2007

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COURTS AND OTHER LEGISLATION AMENDMENT BILL 2007

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Bill introduced on motion by Mr Barry Collier, on behalf of Mr David Campbell.

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.01 a.m.], on behalf of Mr David Campbell, I move:

That this bill be now agreed to in principle.

The Courts and Other Legislation Amendment Bill 2007 provides for miscellaneous amendments to court-related legislation and is part of the Attorney General's regular legislative review and monitoring program. Schedule 1 to the bill makes some important clarifying amendments to the Coroners Act 1980. Coroners are responsible for investigating the circumstances surrounding reported deaths, fires and explosions. They are required to investigate deaths and establish the identity of the deceased, the time and place of death, and the cause and manner of death. Coroners are also required to establish the cause and origin of fires or explosions.

Section 19 of the Coroners Act 1980 provides that if a person is charged with an indictable offence in relation to a death, fire or explosion, the Coroner may decide not to commence an inquest or inquiry until criminal proceedings are concluded. Similarly, if the Coroner forms a view during an inquest or inquiry that a person should be charged with an indictable offence, the Coroner will terminate the inquest or inquiry and refer the case to the Director of Public Prosecutions to consider initiating criminal proceedings. The purpose of section 19 of the Act is to ensure that any criminal proceedings take precedence over coronial inquests and inquiries. Once criminal proceedings are either concluded or a decision has been made not to prosecute, then section 20 of the Act was intended to permit a coroner to commence or continue an inquest or inquiry.

However, the recent decision of the Supreme Court in *Innes & 2 ors v NSW Senior Deputy State Coroner* [2007] NSWSC 1209 held that section 20 did not achieve this objective. Prior to this decision the view was held that section 20 enabled coroners to recommence an inquest or inquiry once proceedings for an indictable offence were finalised. Coroners relied on section 20 as the authority to continue proceedings for the purpose of making findings in relation to the cause and manner of death or the cause and origin of fires and explosions, and to make any recommendations when handing down these findings. Accordingly, the proposed amendments in this bill are intended to clarify provisions relating to the termination of inquests and the subsequent continuation of an inquest or inquiry and restore the legislative interpretation that existed prior to the Supreme Court's decision.

The proposed amendments will confirm that the role of the Coroner has not concluded when an inquest or inquiry is terminated and that it is open to the Coroner to continue proceedings at a later stage to complete the proceedings. In some instances it will be unnecessary to do so, for example, where criminal proceedings have fully exposed issues relating to the cause and manner of death. However, in other instances there may be issues relating to the death that have not been fully canvassed in the criminal trial and the Coroner may therefore wish to continue the inquest or inquiry. The proposed amendments will make it clear that the inquest or inquiry may be continued either by the original coroner who terminated proceedings or, if that coroner is unavailable, by another coroner who is informed of the case. They will also create an express right for persons who had a right of appearance at the original inquest or inquiry to request that the inquest or inquiry continue.

The bill also makes some amendments to the Land and Environment Court Act 1979. Under section 34 of that Act a commissioner can meet informally with the parties on site to discuss the issues in a case and help them to reach an agreement. Legal representatives, experts and objectors can also attend this conference. If an agreement is reached at or after a conference, the commissioner must dispose of the proceedings in accordance with the agreement. If an agreement is not reached, then the case will proceed to a hearing. Evidence cannot be adduced about what occurred in a section 34 conference without the parties' consent.

Section 34 conferences are similar to mediations in that both are designed to bring about agreements between the parties in a less formal environment. There is currently a prohibition on the disclosure of information about section 34 conferences, which is similar to the prohibition that applied to court-ordered mediations before the Civil Procedure Act 2005. Prior to the Civil Procedure Act 2005 evidence could not be called and was not admissible

about what occurred in the mediation. However, the recent Courts Legislation Amendment Act 2007 amended section 34 of the Land and Environment Court Act 1979 to allow evidence to be called and to be admissible, first, about an agreement or arrangement that is reached following a mediation; and, secondly, in circumstances where the court is being asked to make an order to give effect to the agreement or arrangement.

This change was modelled on the Civil Procedure Act 2005 provision relating to mediation. However, section 30 of the Civil Procedure Act 2005 also provides that the same privilege that applies to judicial proceedings with respect to defamation also applies to a mediation session and to documents produced for the mediation. But there is currently no similar provision in relation to section 34 of the Land and Environment Court Act 1979. Without the protection afforded by section 30 of the Civil Procedure Act 2005, parties involved in a section 34 conference might be less frank and less willing to make concessions to settle a dispute. Accordingly, the proposed amendment to section 34 of the Land and Environment Court Act 1979 will apply the approach taken in relation to mediations under the Civil Procedure Act 2005 to section 34 conferences. This will ensure that the same privilege that applies to judicial proceedings with respect to defamation also applies to section 34 conferences and to documents produced for these conferences.

Schedule 3 to the bill makes some minor amendments to the Legal Profession Act 2004 in order to tidy up provisions relating to references to "legal practitioners" in several older pieces of legislation. Many pieces of legislation refer to "legal practitioners" in a variety of different senses. The proposed amendments will help to clarify the intention of these older references to legal practitioners, and to have those intentions reflected in the Legal Profession Act 2004. The bill also amends the Young Offenders Act 1997 to improve the operation of the system of warnings, cautions and youth justice conferences in New South Wales. A number of these amendments have arisen as the result of a recent statutory review of the Young Offenders Act 1997 undertaken by the Attorney General's Department of New South Wales. In addition, the bill contains amendments that implement recommendations made by the New South Wales Law Reform Commission in its recent report No. 104, entitled "Young Offenders".

The Young Offenders Act 1997 provides an alternative process to court proceedings for young people who commit certain types of offences. The Act provides for the use of warnings, cautions and youth justice conferences to rehabilitate young offenders and to deter reoffending. Very serious matters like murder, manslaughter, other offences resulting in the death of a person, sexual offences, drug trafficking, and apprehended violence matters cannot be dealt with under the Act. In October 2006 the Bureau of Crime Statistics and Research released a report that found that the Young Offenders Act 1997 is succeeding in reducing juvenile reoffending in New South Wales. The report concluded that juveniles who receive a caution or attend a youth justice conference are notably less likely to reoffend than those who are referred to the Children's Court. Accordingly, the young offenders scheme is playing an important role in achieving the Government's State Plan priorities of reducing reoffending and reducing antisocial behaviour. By strengthening and improving the operation of the Young Offenders Act 1997 this bill will further contribute to these priorities.

I will now detail some of the key provisions in the bill concerning the Young Offenders Act 1997. The first key amendment is to allow a broader range of victims of crime to confront young offenders at youth justice conferences. Under the Act a victim of crime is able to participate in a youth justice conference when they have suffered harm as the result of an act committed by a child in the course of a criminal offence. The definition of "harm" in section 5 of the Act currently applies where the victim has suffered "mental illness" or "nervous shock". Both of these concepts now have narrow medical and legal meanings. The definition will therefore be expanded to include anyone who has suffered other sorts of psychological harm as a result of an offender's actions, including fear, humiliation, shame or stress.

The definition of "harm" will also be expanded to cover victims who have suffered purely financial loss, in addition to those whose property has been lost, destroyed or damaged. By allowing a wider range of victims to attend youth justice conferences, this amendment will ensure an even greater role for victims of crime in the juvenile justice system. By allowing more victims to have a say in how a young offender is to be punished, the amendment will force even more juvenile offenders to face up to the consequences of their behaviour and the effect that it has on the community.

The second key amendment in the bill will allow victims to have their voices heard as part of the cautioning process under the Young Offenders Act 1997. Under the Act, both police and the Children's Court have a discretionary power to issue a formal caution to a young offender. Being given such a caution is a serious matter—the young offender must face a senior police officer at a police station with their parents or guardian and confront the offence they have committed. Under the amendment being put forward in this bill, a young offender receiving a caution will also have to face up to the impact that their behaviour has had on their victim. Victims will be allowed, in appropriate circumstances, to prepare a written statement detailing the impact that the young offender's behaviour has had on them.

These statements may then be read to the offender as part of the formal cautioning process. Through this process, victims will be able to have their voices heard, and young offenders will be made to understand the impact their behaviour has had on others. The third key amendment in the bill will confirm that police officers,

where appropriate, can notify the parents or guardians of a juvenile offender, either in writing or in person, that a warning has been administered to their child or to a child in their care. This amendment confirms current police practice, and will ensure that parents and guardians are aware of their children's offending behaviour, particularly when it involves risk of harm to the young person or other members of the community. This will allow parents and guardians to play a greater role in monitoring the behaviour of their children.

Another key amendment in the bill will confirm that a young person who is cautioned or undergoes conferencing would have to declare that fact when applying for child-related employment later in life. This is an important amendment because, while many young offenders are given the opportunity to rehabilitate and put their offending behaviour behind them, the New South Wales Government is not prepared to take any risks when it comes to people working with children. The bill will also amend the Young Offenders Act 1997 to make it clear that the Act is consistent with the Children's (Criminal Proceedings) Act 1987 in relation to the age at which persons may be dealt with under the Act.

The New South Wales Law Reform Commission in its Report No. 104, Young Offenders, recently recommended this clarification. The bill will give effect to this recommendation and rectify the anomaly. This bill also contains a provision to amend the Young Offenders Act 1997 to allow police officers to observe the administration of warnings and attend youth justice conferences for training purposes. This will allow individual police officers to develop a first-hand appreciation of how cautions and conferences impact on both offenders and victims, and to appreciate the important role that the young offenders scheme plays in reducing re-offending in New South Wales.

The final key amendment that I wish to speak to is an amendment to repeal provisions in the Young Offenders Act 1997 relating to the Youth Justice Advisory Committee, which is also known as YJAC. The Youth Justice Advisory Committee is a statutory body that was established under the Act to advise the Attorney General and relevant Ministers on its implementation. Now that the young offenders scheme has been established for some 10 years, and is operating well, the Youth Justice Advisory Committee has met the majority of its statutory terms of reference. The Government has therefore decided to combine the functions of committee with those of the Juvenile Justice Advisory Committee, which is also known as JJAC, into a new single body. This body would be able to provide independent and more coordinated advice to the Government on matters relating to juvenile justice.

The Government is considering terms of reference for this body to best reflect the priorities of the New South Wales State Plan. By removing the statutory basis for the Youth Justice Advisory Committee, this bill will allow the Government to move forward with combining the two bodies, and thereby ensuring that coordinated advice is provided to the Government on the full spectrum of juvenile justice issues. As I noted earlier, many of the amendments contained in this bill are based on the recommendations of a statutory review of the Young Offenders Act 1997, as well as those put forward by the Law Reform Commission in its Report No. 104, Young Offenders. The amendments will make the young offenders scheme even more effective in reducing antisocial behaviour amongst young people in New South Wales, and in reducing re-offending.

Debate adjourned on motion by Mr Greg Smith and set down as an order of the day for a future day.