Bill introduced on motion by Mr Greg Smith.

Agreement in Principle

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [4.34 p.m.]: I move:

That this bill be now agreed to in principle.

The purpose of the Courts and Other Legislation Amendment Bill 2011 is to make miscellaneous amendments to legislation affecting the operation of the courts of New South Wales and other legislation administered by the Attorney General and Minister for Justice. 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 and operation of our courts, as well as the operation of agencies within the Department of Attorney General and Justice. I will now outline each of the amendments in turn.

In relation to the Crimes (Sentencing Procedure) Act 1999, schedule 1.1 to the bill makes amendments to part 8B of the Crimes (Sentencing Procedure) Act 1999 to require a retired magistrate to be appointed as a member of the NSW Sentencing Council. The Sentencing Council was established in 2002 in the context of the introduction of standard non-parole periods. The council has various functions, one of which is to keep members of the judiciary abreast of the community's views and values so that more appropriate sentences will be issued. It currently has 15 members who are drawn from diverse backgrounds. There are three former judicial officers on the Sentencing Council, but no former judicial officer of the Local Court is represented. As a large majority of criminal cases come before the Local Court, the Sentencing Council would benefit from a permanent Local Court representative. Schedule 2 amends section 10 of the Act, which relates to the quorum for the Sentencing Council to take account of the increased size of the body, so that a quorum will always require a majority of appointed members. When a magistrate is appointed and the council has 16 members, the quorum will become nine people.

In relation to the Director of Public Prosecutions Act 1986, schedule 1.2 to the bill amends the Director of Public Prosecutions Act 1986 to make it clear that if a judge or former judge is appointed as Director of Public Prosecutions [DPP], then his or her prior judicial service counts towards any judicial pension to which the DPP would be entitled under the Act. Under the Director of Public Prosecutions Act, the DPP is entitled to a judicial pension under the Judges' Pensions Act 1953 in the same way as judges. Primarily, this means that the DPP is entitled to a judicial pension after reaching the age of 60 years and after serving as DPP for not less than 10 years. At present, where a DPP is subsequently appointed as a judge, the Director of Public Prosecutions Act specifically provides that service as DPP is to count as service as a judge for determining the judge's eligibility for a judicial pension.

However, the Director of Public Prosecutions Act does not address the reverse situation of a judge who is subsequently appointed as DPP. The amendment makes it certain that prior service as a judge counts toward service as DPP for the purposes of determining eligibility for the DPP's judicial pension. The amendments are based on the existing provisions of section 8 of the Judges' Pensions Act 1953. That Act details how prior judicial service is to be treated when determining judicial pension entitlements. It provides that any prior service, as judge or DPP, counts as service in the office of judge or DPP that is held immediately before retirement, or death before retirement. It should be noted also that a person is entitled only to a single judicial pension, either as a judge or as a DPP.

In relation to the Land and Environment Court Act 1979, schedule 1.4 to the bill makes amendments to the Land and Environment Court Act 1979 for the purposes of clarifying the Land and Environment Court's jurisdiction and to ensure that the court's procedures run efficiently. First, it makes provision for hearings to be conducted on site in relation to disputes between neighbours about high hedges. Such disputes are often best resolved by a commissioner on-site, because the impacts of the hedge can be assessed directly and the matter disposed of quickly. Secondly, it restores the capacity of the court to conduct on-site hearings of appeals against determinations of applications to modify development consents. These disputes are also liable to be assessed and disposed of most efficiently on-site. Thirdly, the amendments to sections 17 and 20 of the Land and Environment Court Act clarify the court's jurisdiction in regard to the appropriate class of the court's jurisdiction to which such matters belong. This will ensure that the appropriate procedures and powers of the court will then apply to the conduct of those proceedings. The bill provides for this to occur in respect of appeals against determinations of applications to modify development consents and in respect of matters transferred from the Supreme Court under the Civil Procedure Act 2005.

Section 1.5 amends section 13 (5) of the Law Reform Commission Act 1967 to require that the Attorney General table any report provided to him or her by the commission in each House of Parliament within 14 parliamentary sitting days of its receipt. This amendment is intended to reduce the potential for significant time to pass between a report being presented to the Attorney General and it being tabled. A number of other jurisdictions require reports to be tabled within a similar time frame. Victoria and Queensland require that their Law Reform Commission reports be tabled within 14 sitting days of the Attorney receiving a report. This amendment will increase transparency in government and legal policy decision-making and ensure that the recommendations contained in a report are current and relevant at the time of release. After the report has been tabled the Government will consider the recommendations and table a response.

Section 1.6 amends the NSW Trustee and Guardian Act 2009. The amendments to the definition of "reciprocating State" in sections 35 and 81 of the Trustee and Guardian Act confirm that other States and Territories are reciprocating States for the purposes of the making of reciprocal arrangements in relation to an intestacy matter or the management of an estate. This amendment was requested by the NSW Trustee and Guardian to clarify the definition, which will assist in its administration of reciprocal arrangements. Schedule 1.7

amends the Privacy and Personal Information Protection Act 1998 to include the Office of the Sheriff of New South Wales as a law enforcement agency for the purposes of that Act. The Act imposes certain privacy restrictions on public sector agencies but provides exemptions for law enforcement agencies. The Office of the Sheriff carries out certain functions that are of a law enforcement nature, including carrying out evictions, seizing debtors' property and, in their capacity as court security officers, exercising powers of search, seizure and arrest on court premises. By defining the office as a law enforcement agency that law enforcement exemption clearly will apply.

Schedule 1.8 amends the Surrogacy Act 2010 to require that before a parentage order can be granted to transfer parentage from a surrogate mother to the new parents the child's birth must be registered by the Registry of Births, Deaths and Marriages and not simply notified to the registry. This will ensure that there is a record of the child's birth details before a parentage certificate is granted. It is important that this record be created so that the child can access this later on, if he or she wishes. Schedule 1.9 makes amendments to the Trustee Companies Act 1964 that are consequential upon recent amendments made to the Corporations Act 2001 of the Commonwealth. Section 601WBA of the Corporations Act 2001 of the Commonwealth enables the Australian Securities and Investments Commission [ASIC] to make a determination that there is to be a transfer of estate assets and liabilities from a trustee company, known as the transferring company, to another licensed trustee company, known as the receiving company. To make this determination, Australian Securities and Investments Commission must be satisfied, amongst other things, that legislation to facilitate the transfer that satisfies the requirements of section 601WBC of the Corporations Act 2001 has been enacted in the State or Territory in which the transferring company and receiving company are situated.

Prior to the recent amendments to the Corporations Act 2001, the Australian Securities and Investments Commission could only make a transfer determination if the Australian Securities and Investments Commission had cancelled the transferring company's registration. These kinds of determinations are called compulsory transfer determinations. Following the amendments, the Australian Securities and Investments Commission may also make a transfer determination on the application of the transferring company. These new kinds of determinations are called voluntary transfer determinations. Before the national regulatory framework for trustee companies commenced in May 2010, many corporate groups operating across State borders operated multiple subsidiaries whose purpose was to hold a trustee company authorisation in a particular jurisdiction. Many corporate groups wish to transfer the business of these subsidiaries to one licensed trustee company. Voluntary transfer determinations are an expeditious and cost-effective process for trustee companies to rationalise their operations and reduce compliance costs. The proposed amendments to section 34A of the Trustee Companies Act ensure that the legislation will now extend to voluntary transfer determinations made by the Australian Securities and Investments Commission as well as to compulsory transfer determinations. They will enable the Australian Securities and Investments Commission to make voluntary transfer determinations in appropriate circumstances.

The amendments contained in the bill have been the subject of thorough consultation with key stakeholders, including the Chief Justice of New South Wales, the Chief Judge of the District Court, the Chief Judge of the Land and Environment Court, the Chief Magistrate, the Law Reform Commission, the Department of Planning, the New South Wales Sheriff, the Acting Director of Public Prosecutions, the Registry of Births, Deaths and Marriages, the NSW Trustee and Guardian, the New South Wales Bar Association and the Law Society of New South Wales. I commend the bill to the House.