Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [2.40 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

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. It 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 now outline each of the amendments in turn.

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 New South Wales 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 views and values of the community so that more appropriate sentences will be issued. It currently has 15 members 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. The bill also amends clause 10 to schedule 1A of the Act, which relates to the quorum for the Sentencing Council. This will be amended 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 it has 16 members the quorum will become nine people.

Schedule 1.2 of 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 then his or her prior judicial service counts towards any judicial pension to which the Director of Public Prosecutions would be entitled under the Act. Under the Director of Public Prosecutions Act, the Director of Public Prosecutions is entitled to a judicial pension under the Judges' Pensions Act 1953 in the same way as judges. Primarily, this means that the Director of Public Prosecutions is entitled to a judicial pension after reaching the age of 60 years and after serving as Director of Public Prosecutions for not less than 10 years.

At present where a Director of Public Prosecutions is subsequently appointed as a judge the Director of Public Prosecutions Act specifically provides that service as Director of Public Prosecutions 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 Director of Public Prosecutions. The amendment makes it certain that prior service as a judge count toward service as Director of Public Prosecutions for the purposes of determining eligibility for the Director of Public Prosecutions 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 a judge or Director of Public Prosecutions counts as service in the office of judge or Director of Public Prosecutions that is held immediately before retirement or death before retirement. It should also be noted that a person is only entitled to a single judicial pension, either as a judge or as a Director of Public Prosecutions.

Schedule 1.4 of 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, as the impacts of the hedge can be directly assessed and the matter disposed of quickly. Secondly, it restores the capacity for 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 section 17 and section 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 matters transferred from the Supreme Court under the Civil Procedure Act 2005.

Schedule 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 timeframe. 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.

Schedule 1.6 of the bill amends the New South Wales Trustee and Guardian Act 2009. The amendments to the definition of "reciprocating State" in section 35 and section 81 of the Trustee and Guardian Act confirm that other States and the Territories are reciprocating States for the purposes of the management of an estate. This amendment was requested by the New South Wales Trustee and Guardian to clarify the definition, which will assist in their administration of reciprocal arrangements.

Schedule 1.7 of the bill 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 will clearly apply.

Schedule 1.8 of the bill 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 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 is created so that the child can access it later, if he or she wishes.

Schedule 1.9 of the bill makes amendments to the Trustee Companies Act 1964 that are consequential upon recent amendments 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, the transferring company, to another licensed trustee company, the receiving company. To make this determination, the Australian Securities and Investments Commission must be satisfied, amongst other things, that legislation to facilitate the transfer which 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 make a transfer determination only if the commission had cancelled the transferring company's registration. These types of determinations are called "compulsory transfer determinations". Following the amendments, the Australian Securities and Investments Commission also may make a transfer determination on the application of the transferring company. These new types 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 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 Sherriff, the Registry of Births Deaths and Marriages, the New South Wales Trustee and Guardian, the Bar Association and the Law Society. I commend the bill to the House.