

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Citizenship, Minister for Regulatory Reform, and Vice-President of the Executive Council) [4.20 p.m.]: I move:

That this bill be now read a second time.

The purpose of the Courts and Crimes Legislation Amendment Bill 2010 is to make amendments to a range of courts- and crimes-related legislation. Most of the amendments are minor in nature, but some are more substantial and represent refinements to criminal laws in this State. I will now outline each of the amendments in turn. Schedule 1 to the bill contains consequential amendments to the Child Protection (Offenders Registration) Act 2000 as a result of the commencement of the Commonwealth Crimes Legislation Amendment (Sexual Offences Against Children) Act 2010 on 15 April 2010. Amongst other reforms, the Commonwealth Act repealed part IIIA of the Commonwealth Crimes Act 1914 that related to child sex offences committed outside Australia—known as child sex tourism offences—and transferred these provisions to the Commonwealth Criminal Code Act 1995. This bill amends the New South Wales Child Protection (Offenders Registration) Act 2000 to reflect these changes. The amendment ensures that offenders convicted of Commonwealth child sex tourism offences are registrable under the New South Wales Child Protection Register.

The amendments contained in schedule 2 to the bill amend section 94 of the Criminal Procedure Act 1986. Section 94 of the Criminal Procedure Act 1986 defines "offence involving violence" for the purposes of section 93. Section 93 provides that a victim witness is generally not required to attend committal proceedings for an accused charged with an "offence involving violence". The practical effect of offences being included in the definition is that it allows magistrates the discretion not to direct the attendance of the alleged victims at committal hearings unless there are special reasons. Currently the definition does not include section 112 (2) Crimes Act 1900 offences—aggravated break and enter and commit serious indictable offence.

The Office of the Director of Public Prosecutions wrote to the Attorney General requesting that offences falling under section 112 (2) Crimes Act 1900—aggravated break and enter and commit serious indictable offence—be included in the definition of "offence involving violence" under section 94 Criminal Procedure Act 1986. The Office of the Director of Public Prosecutions advises that it is often the case that the serious indictable offence in section 112 (2) is robbery or reckless wounding. On their own, these offences are an offence involving violence as defined by section 94. If, however, the activity is prosecuted under section 112, notwithstanding the violence involved, it falls outside the existing definition.

Consequently, victims of section 112 (2) offences are afforded less protection in relation to attending to give oral evidence at committals than other victims of violence. It is possible that other composite offences, that is, those involving a combination of elements which in isolation would constitute separate offences in the Crimes Act, may equally not be adequately covered by the section 94 definition. The amendment therefore expands the definition of "offence involving violence" to comprise an offence that includes the commission of, or an intention to commit, any of the offences already prescribed under the section, specifically, offences under section 94 (1) (a), (b), (c), (d), (e) and (f). The amendment will address the issues raised by the Office of the Director of Public Prosecutions while helping to achieve consistency for all victims of violence.

Schedule 3 to the bill amends the District Court Act 1973 to allow a person who is or has been an associate judge of the Supreme Court of New South Wales to be appointed as an acting judge of the District Court, where that person is more than 72 years but not more than 75 years of age. Section 18 (4) of the District Court Act confines judicial appointments of a person aged between 72 and 75 to retired judges. This precludes a person who is a current or retired associate judge of the Supreme Court from being appointed as an acting judge of the District Court. Although associate judges are qualified judicial officers, by definition under the Supreme Court Act 1970 an associate judge is not a judge. Currently there are very few acting judges available to sit in the District Court. The amendment will expand the pool of possible candidates that the District Court can draw upon for appointment to act on the District Court bench.

I now turn to the amendments contained in schedule 4 to the bill. Section 4 of the Solicitor General Act 1969 currently allows the Attorney General to delegate the Attorney General's powers and functions to the Solicitor General. The Crown Solicitor has advised that this is limited to the delegation of powers and functions that the Attorney General has in his capacity as Attorney General. It does not, therefore, include the power to intervene in proceedings before a court or tribunal where an Act simply confers this power on the Minister responsible for that particular Act, and the Attorney General is the Minister responsible for that Act. The bill amends the Solicitor General Act 1969 to clarify that the Attorney General's ability to delegate powers and functions to the Solicitor General extends to any power or function to intervene in court or tribunal proceedings, including a power or function conferred on the Attorney General as the Minister administering an Act.

I now turn to the amendments contained in schedule 5 to the bill. The bill amends the Trustee Act 1925 to clarify that it is not necessary to prescribe an individual insurer for the purposes of a prescribed insurer in that Act and

that, rather, a class of insurers can be prescribed. Under the Trustee Act 1925 a trustee is not chargeable with breach of trust arising from loans made on the security of property provided the requirements of section 18 are complied with. One of those requirements is that the amount of the loan must not exceed two-thirds of the value of the property unless repayment of the loan is insured by a prescribed insurer, in which case the amount of the loan is not to exceed 95 per cent of the value of the property.

Clause 5 of the Trustee Regulation 2010 lists individual prescribed insurers. These insurers are all authorised by the Australian Prudential Regulation Authority [APRA] to issue lenders mortgage insurance. Clause 5 of the Trustee Regulation requires regular updating to ensure that only APRA-authorised insurers are prescribed. The proposed amendments will clarify that a class of insurers can be prescribed and allow the regulations to be amended to simply provide that insurers authorised by APRA to issue lenders mortgage insurance are prescribed insurers for the purpose of the Trustee Act 1925. This bill addresses a number of issues relating to the smooth and effective running of courts and tribunals in New South Wales and also makes refinements to crimes-related legislation in this State. I commend the bill to the House.