Local Court Bill 2007
Miscellaneous Acts (Local Court) Amendment Bill 2007

About this Item
Speakers - Sharpe The Hon Penny; Ajaka The Hon John; Rhiannon Ms Lee; Nile Reverend the Hon Fred

Business - Bill, Second Reading, Third Reading, Motion

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MISCELLANEOUS ACTS (LOCAL COURT) AMENDMENT BILL 2007

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Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.24 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That these bills be now read a second time.

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

Leave granted.

The Local Court Bill 2007 will replace the separately constituted local courts in New South Wales with the Local Court of New South Wales, which will sit at various locations across the State. A similar change occurred in 1973 when the District Court of New South Wales was created from a number of separately constituted District Courts. Local courts play an important role in our justice system. The vast majority of people who come into contact with our justice system will do so in a local court. Local courts sit at 155 locations across the State. According to the Productivity Commission's Report on Government Services 2007, local courts handle more matters than any other court in Australia. In 2005-06, local courts finalised 90 per cent of the State's civil matters and 95 per cent of the State's criminal matters. They were the best performing local courts in Australia in 2005-06 in terms of timeliness, a distinction that it has achieved for the last four years running. Before I outline the bills, I will briefly outline the history of the local courts.

While the history of local courts stems from the British Crown, prior to that Aboriginal customary law that applied in New South Wales. Notwithstanding the achievements of various decisions of the High Court in relation to Aboriginal rights, more than any other court local courts have been instrumental in fostering initiatives that ensure traditional and customary law continues to play a role in Australia's legal system. One of those initiatives is circle sentencing, which successfully operates in a number of local courts across the State. Local courts trace their origin back to the bench of Sydney magistrates that was established by Governor Phillip. All of the men who were appointed to the magistracy between 1788 and 1810 held other government positions. It was not until 1819 that a magistrate was appointed to a paid position. Payment of magistrates did not become common practice until 1830.

The Courts of Petty Session were formally established in 1832. A Court of Petty Sessions was constituted by two or more justices of the peace sitting in open court at places designated by the Governor. During the nineteenth century, the judicial and administrative functions of magistrates continued to increase. In 1881, the Metropolitan Magistrates Act authorised the creation of skilled and trained stipendiary magistrates for the Sydney district, having exclusive jurisdiction to deal with summary criminal offences in Sydney. In 1902, the Justices Act consolidated colonial legislation and provided the legislative underpinning for handling criminal cases and statutory applications in local courts. This Act remained in force for approximately 100 years until it was replaced in 2003 by a significant raft of reforms.

From 1955, all newly appointed magistrates were required to be legally qualified. Female magistrates began to be appointed from the 1970s onwards. In 1982 the Local Courts Act abolished the Courts of Petty Session and created Local Courts in New South Wales. Since that time local courts have continued to play an increasingly important role in the justice system. Not only do they handle the largest number of cases each year in New South Wales, but they are also involved in innovative schemes designed to reduce reoffending. As I mentioned earlier, the circle sentencing program is now operating in several courts across the State. The Magistrates Early Referral into Treatment program, or MERIT, is designed to divert people into a short but intensive drug treatment program.

I turn now to the reasons that these bills are necessary. At present, each local court is established separately and proceedings are commenced in a specific local court. If a party wishes to have proceedings in one local

court dealt with in another local court, the party has to apply to have the proceedings transferred to the other local court. The current structure creates restrictions on the efficient operations of local courts. For example, a registrar for one local court cannot exercise powers in relation to proceedings at another local court. The current structure also restricts parties who are required to file documents in proceedings at a particular local court, even though it may be more convenient for the party to file a document at another local court registry. By contrast, courts such as the Supreme Court and the District Court are established as a single entity with authority to operate throughout New South Wales. A registrar in one location can make orders in a case that was commenced in another location without first having to transfer the case to the other location.

The Local Court Bill will create a local court of New South Wales. Court and registry services will be able to operate more effectively once there is a single court operating throughout the State. A party will be able to make inquiries about his or her proceedings at any registry instead of having to contact the registry where the matter is to be heard. In the future, parties will be able to electronically file documents centrally through JusticeLink even though the proceedings might be heard at courts across New South Wales. The Local Court Bill will replace the Local Courts Act 1982. It largely carries over existing provisions although there has been some reorganisation of provisions to ensure that similar matters are grouped together. To make the transition easier, section headings in the bill refer to the section on which the new section is based.

The bill preserves the appointments of existing magistrates and other officers and enables the court to continue to deal with existing proceedings. A number of changes are being introduced in the bill. These include, firstly, requiring a person to have a minimum of five years' experience as a legal practitioner before being appointed as a magistrate and, secondly, creating a single Local Court Rule Committee to make rules in relation to civil, criminal and application proceedings instead of the existing two rule committees. The Local Court Bill introduces the concept of a relevant registrar. Some Acts refer to actions that need to be carried out by the registrar of a particular local court, for example, notifying the Roads and Traffic Authority when a conviction or order is made under the Road Transport (Heavy Vehicles Registration Charges) Act 1995. This term will be used when an Act or regulation needs to refer to a registrar at a particular place instead of to registrars generally.

There are numerous references to local courts in Acts and regulations. The Miscellaneous Acts (Local Court) Amendment Bill will update these references with references to the Local Court of New South Wales. The changes being made by these bills will facilitate the Government's ongoing commitment to providing accessible court services across the State. I commend the bills to the House.

The Hon. JOHN AJAKA [3.25 p.m.]: The Local Court Bill 2007 seeks to replace the separate Local Courts in New South Wales with a unified Local Court of New South Wales. The bill also seeks to repeal the Local Courts Act 1982 and enact new provisions relating to the Local Court of New South Wales. The object of the Miscellaneous Acts (Local Court) Amendment Bill 2007 is to make amendments to various Acts and instruments as a consequence of the proposed Local Court Bill 2007. Similar changes to the structure of the court system were made in 1973 when the District Court Act 1973 abolished the District Courts and Courts of the Quarter Sessions and replaced them with one District Court of New South Wales with a statewide criminal and civil jurisdiction.

As stated by the member for Epping, Greg Smith, in the other House during the agreement in principle stage, one wonders why this proposal has taken so long because the District Court has had similar changes for many years. The Opposition does not oppose the bills. The Local Court Bill 2007 effectuates the unification of the many Local Courts in New South Wales into a single entity, the sittings of which will be held at various locations within New South Wales. As a result, parties will be able to institute proceedings in any court or have their matter moved to another court. At present, parties must apply to have their proceedings transferred to another court by making an application for a change of venue, exacerbating the cost of proceedings and causing undue delay. The bill seeks to streamline the court and registry system across New South Wales and promote administrative efficiency.

Given that the Local Courts of New South Wales handle the overwhelming majority of civil and criminal matters, it is highly important that they do so in an efficient and competent manner. The bill aids this process by ensuring that delays and costs are kept to a minimum. Schedule 1 of the bill preserves the appointment of magistrates, maintaining conditions of appointment and office that in large part are consistent with current provisions. However, the bill introduces amendments requiring magistrates to have practised for a minimum of five years as qualified Australian lawyers or to have previously held judicial office. This amendment will eliminate the scope for questionable appointments of persons who have been admitted as Australian lawyers for only a relatively short period and are caught up in criticism of appointments by, to use an Australian colloquialism, mates.

The Opposition emphasises the importance of transparency in the selection and appointment of new magistrates. With a view to maintaining public confidence in the separation of powers between the Executive and the judiciary, it is essential for there to be a perception that the avenues of selection are open, the criteria applied are readily accessible, and that the appointments are divorced from partisan political considerations. The bill repeals the Local Court Act 1982 and largely transfers its provisions to the proposed Local Court Act. However, it does not include the oath of office for magistrates that was previously contained in section 16 of the Local Court Act 1982.

Section 9 of the Oaths Act 1900 restores the requirement of an oath to be taken by all judges, magistrates and other judicial officers. Another void in the Local Court Bill 2007 relates to section 27 of the Local Court Act 1982, which stipulates a requirement of periodic reports by the Chief Magistrate. The bill does not contain any provision for such reports. However, despite the absence of a matching provision in the bill, reporting mechanisms currently are covered by the requirement for Chief Magistrates to participate in annual courts reviews and the National Report on Government Services.

The Attorney General's office has also advised that it does not believe the current section 27 powers match the needs of the Attorney General, and the Attorney General still has the power to request information on a specific basis. These provisions are the same as those governing information requests in the District Court and the Supreme Court. The Opposition wishes to emphasise the importance of ensuring that sufficiently experienced and trained staff hold positions in the new centralised Local Court Registry when the legislation comes into force. Indeed, as the member for Epping, Mr Greg Smith, noted in another place, it is essential that we avoid situations such as occurred in the Janine Balding case, when a grant of special leave for appeal to the High Court was obtained simply because a staple was not securing the indictment and orders of the Court of Criminal Appeal to other documentation.

The Opposition is wholly supportive of moves to increase the efficiency of court administration insofar as this does not compromise the high calibre of court registry staff and other personnel. I also note that changes made to the Local Court Rule Committee have ensured that the respective professional bodies appoint barristers and solicitors to the committee. This will eliminate representations from the Director of Public Prosecutions and the Legal Aid Commission while maintaining representation from the Attorney General's office and the Minister. There now also appears to be one committee for both civil and criminal matters instead of separate committees. The Hon. Barry Collier in the agreement in principle speech in another place on 13 November 2007 did not refer to the input of any key stakeholders such as the Legal Aid Commission and the Director of Public Prosecutions in formulating the changes. I emphasise the importance of having a thorough consultative process when proposing such amendments. The bill does nothing to change the current jurisdictional limit of $60,000 in civil jurisdictions and does not change matters that can come before the Local Court in criminal jurisdictions. This maintains the fundamental structure of the legal system and does not sacrifice the jurisdictional limits of the court in pursuit of efficiency.

The Miscellaneous Acts (Local Court) Amendment Bill 2007 will necessarily update various Acts, instruments and provisions in order to effect the changes made by the Local Court Bill 2007. It also makes changes to terms and references. The Local Court Bill 2007, together with the Miscellaneous Acts (Local Court) Amendment Bill 2007, aims to facilitate effectively the provision of accessible and streamlined court services across New South Wales. Before I conclude my remarks I would like to bring a matter to the attention of the Attorney General and the Parliamentary Secretary for their consideration—namely, that the title "magistrate" be replaced with the title "Local Court judge". Magistrates used to be addressed as "Your Worship". I have heard them addressed as "Your Worship", "Your Eminence", "Your Holiness", "Your Lordship" and—my absolute favourite—"Your Greatness", usually by those who were not represented by legal counsel and who were hoping that the greater the title they bestowed upon the magistrate, the lesser their sentence would be.

It makes no sense, other than for traditional reasons, to refer to magistrates as "Your Worship" when it was known in the community that judges are addressed as "Your Honour". It would be truly a step in the right direction if magistrates were to be robed and addressed as "Your Honour" to ensure that defendants, especially young people, showed them the utmost respect. On that basis, I would submit that the term "magistrate" is outdated. I ask the Attorney General to consider replacing the term "magistrate" with "Your Honour". I note that there does not appear to be any constitutional difficulty with this change of title as under the Constitution Act 1902, Section 52 (1), Definition and application, "judicial office" encompasses both judges and magistrates. The streamlining reforms for the Local Courts are long overdue. As previously stated, the Opposition does not oppose the bills.

Ms LEE RHIANNON [3.34 p.m.]: The Greens do not oppose the Local Court Bill 2007 or the Miscellaneous Acts (Local Court) Amendment Bill 2007. The principal bill, the Local Court Bill 2007, will replace the separately constituted Local Courts in New South Wales with the Local Court of New South Wales. The newly constituted Local Court of New South Wales will sit at various locations across the State. I understand that this new arrangement will mirror the arrangements for the District Court that have been in place since 1973. The bill will smooth the functioning of Local Courts both for the staff and, importantly, for people who appear before the Local Courts. At present each Local Court is a separately constituted entity. A party to a case must file documents with the court in which they will appear, not the court that is closest to, or most convenient for, the accused. The bill will allow parties to make inquiries and file documents at any Local Court registry.

Local Courts handle the lion's share of court work in New South Wales. In 2005-06 Local Courts finalised 90 per cent of the State's civil matters and 95 per cent of the State's criminal matters. The burden on Local Courts is immense, and I congratulate their tireless staff. The court system must be given sufficient resources to carry this burden, as must the prosecuting agencies and legal aid and community legal centres. Community legal centres are crying out for funding. The Greens call on the Labor Government, and particularly the Treasurer, the Hon.

Michael Costa, to take seriously the budget submission put forward by the Combined Community Legal Centres Group (NSW) Incorporated. The submission calls for maintenance funding for community legal centres in New South Wales to increase from $4,313,015 to $8,018,776 per year and for enhanced funding of $500,000 per year for the provision of new services relating to employment law, legal services for people with intellectual disabilities, and legal services for refugees.

This increased funding would mean that an additional 55,000 disadvantaged people could receive legal assistance services from New South Wales community legal centres every year. It would also allow centres to increase greatly the number of community legal education sessions they provide to client communities and to work on many more legal policy projects. Community legal centres play a key role in ensuring that all people in New South Wales—regardless of how much money they have in their pockets—have access to the justice system. The Greens call on the Government to deliver on the Combined Community Legal Centres Group funding submission in the next budget.

Reverend the Hon. FRED NILE [3.36 p.m.]: The Christian Democratic Party supports the Local Court Bill 2007, which replaces the separately constituted Local Courts in New South Wales with the Local Court of New South Wales, which will sit at various locations across the State. The bill is modelled on the legislation that created the District Court of New South Wales from a number of separately constituted District Courts. The bill provides for the appointment of magistrates and other officers of the Local Court and confers jurisdiction on the Local Court. I note that the Local Court system began with the first settlement in 1788. The first bench of Sydney magistrates was established by Governor Phillip. All the men who were appointed to the magistracy between 1788 and 1810 held other government positions. It was not until 1819 that a magistrate was appointed to a paid position, and payment of magistrates did not become common practice until 1830.

From my reading, I have learned that some early magistrates were reformed convicts who had become successful farmers and business people. This was an encouraging development. Obviously some of those transported to Australia during the convict era were not evil but had transgressed the barbaric laws in force in England at that time. So when they became free men many took the opportunity to improve themselves. Courts of Petty Sessions were formally established in 1832. The Justices Act consolidated colonial legislation and provided the legislative underpinning for handling criminal cases. The Act remained in force for more than 100 years until it was replaced in 2003 by new legislation.

From 1955 all newly appointed magistrates were required to be legally qualified. Female magistrates were appointed from the 1970s onwards. In 1982 the Local Courts Act abolished the Court of Petty Sessions and created the Local Court in New South Wales. As other members have said, the Government has to ensure that there are sufficient resources for Central Local Court to operate efficiently, and to meet all requests for information to allow the efficient conduct of the judicial system in this State. The Christian Democratic Party assumes the Government has included that in its budget, and we support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.40 p.m.], in reply: I thank honourable members for their contributions to the debate on the Local Court Bill 2007, which is obviously not controversial. Principally it is administrative and replaces the separately constituted Local Courts in New South Wales with the Local Court of New South Wales, which will sit at various locations across the State. I will respond to two issues raised by the Hon. John Ajaka, the first of which related to consultation with regard to the operation of the new Local Court Rule Committee. Currently, the Local Court has two rule committees: one makes rules about criminal and application proceedings, while the other makes rules about civil proceedings.

The Director of Public Prosecutions and Legal Aid are represented on the committee that makes rules about criminal and application proceedings. A representative of consumer groups is to be a member of the committee that makes rules about civil proceedings. The two committees will be merged into one committee. Proposed section 25 relates to the membership of the Rule Committee. The members will include the Chief Magistrate and members of the legal profession. Under proposed section 25 (2), if the committee is making rules about civil proceedings it will include a representative of consumer groups; under proposed section 25 (3), if the committee is making rules about criminal and application proceedings, it will include representatives from the Director of Public Prosecutions and Legal Aid.

The Hon. John Ajaka suggested a change of nomenclature from magistrate to judge. There is some argument to support such a change, but magistrates are treated in a similar way across all jurisdictions in Australia and the Government would prefer to remain consistent in that regard, and keep the name "magistrate". The Local Court Bill 2007 brings us into line with other jurisdictions by providing for a minimum period of qualification for appointment as a magistrate. I commend the bills to the House.

Question—That these bills be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bills read a second time.

Leave granted to proceed to the third reading of the bills forthwith.

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That these bills be now read a third time.

Bills read a third time and returned to the Legislative Assembly without amendment.