



Full Day Hansard Transcript (Legislative Council, 13 November 2013, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 13 November 2013 (Proof).

CIVIL AND ADMINISTRATIVE TRIBUNAL AMENDMENT BILL 2013

CIVIL AND ADMINISTRATIVE LEGISLATION (REPEAL AND AMENDMENT) BILL 2013

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [9.03 p.m.], on behalf of the Hon. Michael Gallacher, I move:

That these bills be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Civil and Administrative Tribunal Amendment Bill 2013 and the Civil and Administrative Legislation (Repeal and Amendment) Bill 2013 as cognate bills.

When the NSW Civil and Administrative Tribunal—which will be known more affectionately as NCAT—commences on 1 January 2014, it will exercise the functions of more than 20 existing tribunals. The Consumer, Trader and Tenancy Tribunal, Administrative Decisions Tribunal and Guardianship Tribunal, as well as a number of other smaller tribunals, will fall within its jurisdiction.

This is a consolidation project of considerable size. To ensure that stakeholders could be properly consulted, legislation to establish the new tribunal has been introduced into Parliament in stages. The first stage—the Civil and Administrative Tribunal Act 2013—received bipartisan support when it was enacted earlier this year. That Act set up NCAT's divisional and membership structure. It also included some transitional provisions to transfer existing tribunals and tribunal members to NCAT.

The bills now being introduced by the Government represent the next and final stage of the legislation needed to support NCAT. The Civil and Administrative Tribunal Amendment Bill—which I will refer to as the amending bill—sets out the jurisdiction, powers and functions the tribunal will need to hear and determine matters.

It also contains further transitional provisions to make sure that matters currently being heard by existing tribunals can be seamlessly transferred to the new tribunal environment.

The amending bill confers four different types of jurisdiction on the tribunal. In its general jurisdiction, NCAT will hear a wide variety of matters, ranging from consumer disputes to guardianship proceedings. In its administrative review jurisdiction, the tribunal will provide citizens with the ability to challenge decisions made by a number of government agencies and other bodies.

NCAT will also have an appeal jurisdiction, which will enable the tribunal's appeal panel to quickly and efficiently hear appeals against most decisions made within the tribunal. NCAT will also hear appeals from certain external bodies, including certain appeals from the Mental Health Review Tribunal under the Drug and Alcohol Treatment Act.

Finally, the bill gives NCAT enforcement jurisdiction, which will enable it to issue civil penalties and hear proceedings for contempt. Almost all decisions made by NCAT will be appealable to the Supreme Court or, in some cases, other courts.

The Government is establishing NCAT to provide the citizens of this State with a cost-effective, informal and efficient forum for resolving disputes and other matters. While the legislation gives the President of NCAT flexibility to run the tribunal's day-to-day business, the legislation also gives clear guidance to the tribunal regarding the need to deliver fast and effective services to its users.

For example, section 36 of the amending bill contains a guiding principle which will inform the exercise of any power under the Act or regulations. The guiding principle requires the tribunal, and any person appearing before it, to facilitate the just, quick and cheap resolution of the real issues in proceedings.

The guiding principle also requires the tribunal to ensure that the cost of proceedings remains proportionate to the importance and complexity of the matter that is in dispute. In addition, section 37 of the amending bill requires the tribunal to promote the use of early dispute resolution processes wherever appropriate.

The amending bill also sets out the general or "default" requirements regarding the tribunal's practice and procedure. For example, the bill includes provisions that set out how the tribunal is to be constituted. To ensure that tribunal proceedings remain as informal as possible, the bill also provides that parties are to represent themselves in proceedings and limits the circumstances in which costs can be awarded.

However, NCAT will exercise a diverse jurisdiction. The Government understands that a "one-size-fits-all" approach will not work for all matters. For example, procedures that deliver good outcomes in complex guardianship proceedings might not work for low-value consumer disputes—and vice versa.

The schedules of the amending bill therefore contain special procedures in relation to some proceedings, including professional discipline and guardianship. The amending bill has been drafted to ensure that the schedules override the general provisions of the bill to the extent of any inconsistency.

For example, while section 27 of the amending bill permits the tribunal to be constituted by a single member, the Guardianship Schedule specifies that a panel of three members must hear substantive matters in the Guardianship Division.

The members allocated to hear these matters will need to have special expertise in the guardianship jurisdiction. This preserves the existing requirements of the Guardianship Act.

Special requirements will also be preserved in relation to professional discipline applications. For example, professionals facing disciplinary action will be entitled to be represented by a lawyer. These matters will also be heard by a multi-member panel, which will continue to include professional and community members. A number of other special requirements have been preserved.

The Civil and Administrative Legislation (Repeal and Amendment Bill) is also being introduced as a cognate bill. The repeal and amendment bill makes changes to all New South Wales legislation that makes reference to the tribunals that are being consolidated into NCAT. As honourable members can see from the size of the bill, this has been no easy task.

A large proportion of the repeal and amendment bill simply updates references to the existing tribunals with references to NCAT. However, the Government has also taken this opportunity to reduce unnecessary duplication by removing provisions that will not be needed once NCAT's legislation commences. In particular, the Consumer, Trader and Tenancy Act will be repealed entirely.

While the repeal and amendment bill is largely machinery in nature, it is extremely important. This bill will ensure that NCAT is authorised to exercise the jurisdiction of the existing tribunals when it commences on 1 January 2014. This will ensure that tribunal users do not experience a break in service when NCAT commences.

The establishment of NCAT affects a wide range of stakeholders. The Government has therefore consulted widely on these bills during the past 12 months to ensure that the tribunal's legislation meets the needs of all tribunal users. A number of professional associations, advocacy groups, tribunal user groups and tribunal representatives have contributed to the final form of this legislation.

I would like to take this opportunity to thank each of the individuals and organisations that have contributed their time to making sure that NCAT's legislation is appropriate and effective. The Government is confident that these bills will support the tribunal to increase the consistency, quality and efficiency of tribunal services.

NCAT represents a new era of accessible justice in this State. It is part of the Government's broader commitment to improving public services for the people of New South Wales. NCAT will simplify the complexity of the existing tribunal system, providing the citizens of this State with a "one-stop shop" for almost all tribunal services for the first time.

NCAT is a unique opportunity to improve the way that tribunal services are delivered in this State. It is an opportunity to identify centres of excellence within our tribunal network and expand them. And it is an opportunity to raise community awareness and confidence in our tribunal system.

Most of all, NCAT is an opportunity to make sure that the people of New South Wales receive the benefit of a consistent and coordinated approach to the delivery of tribunal services.

I commend the bill to the House.