



Legislative Council

Courts Legislation Miscellaneous

Amendments Bill Hansard - Extract

21/11/2002

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [9.12 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

This Bill proposes miscellaneous amendments to legislation affecting the operation of the courts of New South Wales.

Late last year, Parliament passed the Justices Legislation Repeal and Amendment Act 2001, the Criminal Procedure Amendment (Justices and Local Courts) Act 2001 (the CPA Act) and the Crimes (Local Courts Appeal and Review) Act 2001. This legislative package will replace the Justices Act 1902, a complex, disjointed, procedure orientated and difficult to understand piece of legislation, which sets out the procedures to be followed for criminal cases and statutory applications in the Local Court.

Given the magnitude of the changes brought about by the Justices Act reform package, it was necessary to delay commencement until new rules of court were prepared and agencies could make necessary preparations to implement the new procedures. The Local Court Rule Committee has now drafted the rules to support the package and other agencies are working on their implementation plans.

In the process of drafting the necessary rules, the Local Court Rule Committee has identified a number of minor areas where legislative amendment is required to facilitate the introduction of the new operational procedures, to clarify the requirements of a new section or to ensure consistency with the current regime.

Schedule 1 of this Bill makes a number of consequential amendments to the Crimes Act 1900, the Criminal Procedure Act, the Gaming Machines Act 2001, the Liquor Act 1982, the Local Courts Act and the Protection of the Environment Operations Act 1997.

Schedule 1.1 will amend section 562A of the Crimes Act 1900 to make it clear that those people who are currently authorised to issue a complaint and summons in relation to apprehended violence orders will continue to be able to do so. There was a concern that the Justices Act reform package may have inadvertently restricted the class of people who could issue such processes.

Schedule 1.2[1] and [5] will amend sections 50 and 175 of the Criminal Procedure Act which set out the requirements for the contents of a court attendance notice. The sections introduce new terminology which may be ambiguous. It was not intended that the Justices Act reform package change the law in relation to the contents of the initiating process therefore sections 50 and 175 will be amended to more closely reflect the language of the current law.

Schedule 1.2[2] will amend sections 51 and 176 of the Criminal Procedure Act which provide that a court attendance notice may not relate to more than one offence. This restriction will cause significant problems for the police when they issue Field Court Attendance Notices. The benefits of being able to issue Court Attendance Notices out in the field, without having to come to court to file the documents, would be lost if police had to issue multiple Notices where a person was being charged with a number of offences. The Bill will repeal these sections.

Schedule 1.2[3] will amend section 88 of the Criminal Procedure Act to make it clear that a deposition made by a dangerously ill person so that the person's evidence is not lost is an exception to the general rule that a written statement made by a person who has since died is not admissible in committal proceedings.

Schedule 1.2[4] will amend section 158 of the Criminal Procedure Act which requires transcripts of committal proceedings in Local Courts to be certified. The certification requirements are unnecessary and are an impediment to electronic transfer of transcripts to parties and between court registries. The amendment will remove the certification requirements and to include a discretionary power for the court to exclude a transcript if there is some doubt about the accuracy of the document.

Regulations can be made under the Justices Act to exempt the prosecution from serving a brief of evidence in minor matters commenced by penalty notice or where it would be unnecessary and impractical to prepare a brief of evidence. This saves prosecuting authorities from preparing and serving briefs of evidence in thousands of minor

matters such as traffic infringement cases. There is currently no equivalent power under the Criminal Procedure Act. Schedule 1.2[7] will amend section 187 of the Criminal Procedure Act to allow regulations to be made to prescribe a class of actions where service of a brief is not required thereby making the new legislation consistent with the current law. A consequential amendment will also be made to section 183 to make it consistent with s.187.

Section 240 of the Criminal Procedure Act sets out a procedure for the recall of warrants. This section does not reflect what is intended to be the practice in this area. Schedule 1.2[8] to [10] will amend section 240 to enable the Local Court to cancel warrants if requested to do so by the person who originally requested the warrant or if it is appropriate to do so. It will then be the responsibility of the person holding the warrant rather than the Court to actually dispose of the warrant.

Section 313 of the Criminal Procedure Act was adapted from section 147 of the Justices Act 1902. Subsections (1) and (2) refer to "warrants issued under this Act". This terminology was suitable in the Justices Act 1902 because all warrants relating to proceedings in Local Courts were issued under the Justices Act. The Justices Act reform package will allow warrants to be issued under the Criminal Procedure Act 1986 and the Local Courts Act 1982. Schedule 1.2[11] to [15] will amend section 313 to make it clear that the provision applies to warrants issued under the Criminal Procedure Act or any other Act.

The amendments to the Liquor Act 1982 and Gaming Machines Act 2001 will address anomalies arising as a result of the Justices Act reform package.

Schedule 1.3 will amend section 196 of the Gaming Machines Act to remove references to "information" which is an antiquated term found in the Justices Act 1902 which is scheduled to be repealed when the Justices Act reform package commences.

Sections 14 and 15 of the Liquor Act respectively provide the Licensing Court with discretion to adjourn matters and amend applications in both criminal and civil matters. These sections are to be omitted by the Justices Act reform package. Schedule 1.4 will reinstate the effect of these sections in relation to non-criminal applications thereby ensuring that uniform procedures are adopted in the Local and Licensing Courts.

Court fees for matters in the Local Court are currently set out in the Justices (General) Regulation 2000. This regulation will be repealed when the Justices Act reform package commences. There is no provision in the Local Court Act 1902 to make regulation to set fees. Schedule 1.5[1] includes a regulation making power in the Local Court Act to allow fees to be set. In addition, Schedule 1.5[5] includes a transitional provision which will allow the current regulation to remain in force until a new regulation is made.

This Bill will also clarify the rule making power of the Local Court. Each of the Acts in the Justices Act reform package confer various rule making powers on the Local Court Rule Committee. It is preferable, for consistency with other courts, that the Local Court Rules be made under the Local Court Act 1982 rather than having separate rules made under each of the Acts. Schedule 1.5[2] and [3] will amend section 28A of the Local Court Act 1982 to make it clear that rules can be made under that Act even if the rule making power is conferred on the Local Court Rule Committee by another Act.

Schedule 1.5[4] will re-enact in the Local Courts Act, a provision currently contained in the Local Courts (Civil Claims) Act that makes Local Court practice notes subject to the disallowance and publication provisions applying to regulations. Schedule 1.6 makes the consequential amendment to the Local Courts (Civil Claims) Act to remove this provision from that Act. The amendments will make it clear that all practice notes and not just those relating to civil procedure are subject to disallowance and publication provisions.

The Justices Act reform package will amend s.268 of the Protection of the Environment Operations Act 1997 and in doing so, will inadvertently remove the reference which identifies against whom a noise abatement order may be sought. Schedule 1.7 clarifies against whom such an order can be sought.

Schedule 2 of the Bill deals with amendments relating to electronic case management for courts.

Two years ago, Parliament passed the Electronic Transactions Act. That Act formed part of a national scheme developed by the Standing Committee of Attorneys General which was designed to remove any doubts about the validity of electronic transactions and to facilitate the implementation of electronic commerce by both public and private sector agencies.

It was recognised, however, that the Act did not fully address the special issues which arise for judicial bodies in relation to electronic transactions. For this reason, the Electronic Transactions Regulation 2001 excluded transactions relating to judicial proceedings from the operation of Division 2 of Part 2 of the Act dealing with the giving of information in electronic form, the use of electronic signatures, the production of documents in electronic form and the retention of information in electronic form.

In the two years since the Electronic Transactions Act was passed, much work has been carried out on developing systems to enable the public to deal electronically with courts and tribunals.

Earlier this session, Parliament passed the Courts Legislation Further Amendment Act 2002 which amended the Land and Environment Court Act to facilitate the introduction of electronic filing of applications in Class 1, 2, 3 and 4

matters in the Court. The Court will shortly be implementing its new eCourt system to enable on-line lodgment of originating and other documents and fee payments, service of documents and remote case enquiries.

My Department is also working on a new computerised case management system for the NSW Supreme, District and Local Courts and the Sheriff's Office. The system will provide common software to all NSW courts, allowing information to be exchanged electronically between each court, justice agencies, the legal profession and court users in general. It will offer the facility for creating an electronic court file containing every item that would normally be held on a court's paper file.

As with the Land and Environment Court, there are legislative impediments to implementing an electronic case management system in the Supreme, District and Local Courts. Because the Courts operate under a number of different Acts, a slightly different approach has been taken to that taken for the Land and Environment Court, which operates under a single Act of Parliament.

Rather than specifically amending each Act to remove impediments to electronic commerce, the amendments in Schedule 2 create a separate legislative regime which can, by Order published in the Gazette, be applied to courts establishing an electronic case management system. Whilst the initial focus of this legislation is to enable an electronic case management system to be established in the Supreme, District and Local Courts, the legislation will permit any person or body that exercises judicial, magisterial or coronial functions to be established as an electronic case management court. Such an approach recognises the move towards electronic service delivery across Government.

The specific details about how an electronic case management system will operate in a particular court will be contained in rules of court or regulations under which the particular court operates. Proposed section 14N clarifies the rule and regulation making power of courts and the Executive in this regard.

Schedule 3 of the Bill deals with amendments relating to appeals to the Court of Appeal.

The Supreme Court Act 1970 requires a party to seek leave if they wish to appeal from consent, costs or interlocutory order of a Supreme Court judge. The Bill will amend the appeal provisions in various court and tribunal legislation to ensure that the same principle applies when parties seek to appeal against consent, costs or interlocutory orders.

Schedule 4 of the Bill deals with a number of miscellaneous amendments.

Schedule 4.1 repeals an unintended consequential amendment to the Coroners Act 1980. The Community Services Legislation Amendment Act 2002, once commenced, will amend s.14B of the Coroners Act to make it mandatory for the Coroner to hold an inquest into certain categories of deaths of vulnerable children and disabled persons in care. The Coroner would be required to hold an inquest even if the death is one where the Coroner would not ordinarily hold an inquest. The State Coroner has indicated that this requirement will have massive resource implications for the Coroner's Office. This was not the intent of the legislation.

The Bill will repeal s.14B of the Coroners Act. The Coroner will still be able to hold an inquest into the death of a vulnerable child or disabled person in care where one is warranted, using the existing powers available to that office.

Schedule 4.2 will amend the Costs in Criminal Cases Act 1967 to make it clear that a certificate under the Costs in Criminal Cases Act 1967 may be granted when the is given by the Director of Public Prosecutions gives a direction that that no further proceedings be taken. The amendment will remove a doubt that had arisen as to whether a certificate could be granted in such cases due to differences in terminology between the Costs in Criminal Cases Act and the Director of Public Prosecutions Act 1986.

Schedule 4.3 will amend the Interpretation Act 1987 so as to allow rules of court to provide for forms to be approved under the rules even though some other Act or statutory rule requires such forms to be prescribed by the rules. This provision will give courts greater flexibility to approve their own forms.

Schedule 4.4 makes a number of limited technical amendments to the cost assessment regime under the Legal Profession Act 1987. Cost assessment matters are handled through the Supreme Court. The amendments will enable these matters to be handled through the electronic case management system that is being developed for the Supreme Court.

I am aware that some issues have been raised about the cost assessment scheme, which has been operating for nearly ten years. For this reason, my Department will be conducting a review of this scheme next year. Comments will be sought from the public at that time.

I commend the Bill to the House.