

## Second Reading

**The Hon. TONY KELLY** (Minister for Primary Industries, and Minister for Lands) [6.06 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

### Leave granted.

The main purpose of the Judicial Officers Amendment Bill 2009 is to amend the Judicial Officers Act 1986 to provide for the temporary exchange of judicial officers between the State and Territory courts and administrative decisions tribunals.

The NSW Government has been the driving force behind the development of this judicial exchange program through the Standing Committee of Attorneys-General. It represents a further step toward building a national judiciary, which will in turn bring benefits to the NSW justice system.

The Attorney General gained the support of his SCAG colleagues for streamlining and formalising the exchange of judicial officers between jurisdictions following a proposal put forward by the Chief Judge of the NSW District Court.

The bill is based upon the model provisions approved by the Standing Committee of Attorneys-General. It is underpinned by agreed Principles for Exchange, which will be the subject of a formal agreement between participating jurisdictions.

Other Australian jurisdictions have expressed their support for judicial exchange as facilitated by this bill. NSW is the first jurisdiction to introduce this model legislation. The Government anticipates that the other participating jurisdictions will soon follow.

The proposed judicial exchange reforms are generally supported by the judiciary, including the Chief Justice, and will:

Streamline the process for arranging exchanges, which are currently undertaken on an ad hoc basis

Allow the beneficial exchange of information and ideas between judicial officers in Australian jurisdictions

Contribute to the development of a national jurisprudence, while at the same time generally enhancing judicial development

The bill also amends the Judicial Officers Act 1986 to clarify the operation of the doctrine of incompatibility of office, including its application to judicial exchanges.

The proposed judicial exchange provisions allow the Attorney Generals of the Commonwealth, States and Territories to enter into arrangements for the temporary exchange of judicial officers between New South Wales courts and corresponding interstate courts.

Such "exchanges" may involve an actual exchange of judicial officers between two jurisdictions, but also cover situations where a State or Territory judicial officer sits in another jurisdiction without reciprocation from the other jurisdiction. An example of such a situation would be where local judicial officers are precluded from hearing a matter because of a conflict of interest and an interstate judicial officer is asked to hear the matter. While these situations do not arise very often it is important that there be clear mechanisms to cover such circumstances.

Such one-way arrangements may also take place in the case of federal court judicial officers. For constitutional reasons, State and Territory judicial officers cannot sit on a Federal court. Nevertheless, the Commonwealth Government has expressed a willingness to allow one-way "exchanges" so that Federal court judicial officers can sit on State or Territory courts.

The legislation has also been drafted to allow New Zealand judicial officers to participate should such an arrangement be entered into at a future date.

The bill provides that the term of an appointment made under the exchange arrangements is limited to six months initially, but may be renewed. An appointment may be terminated at any time in accordance with the arrangement.

A list of New South Wales courts and corresponding courts in other jurisdictions that have been approved to participate in the exchange program is set out in the schedule to the bill.

The Principles for Exchange underpinning the legislation include a requirement that the relevant Minister in each jurisdiction must approve the exchange, or any extension made under an agreement entered into in accordance with

the legislation.

The principles also provide that heads of jurisdiction may not participate in the exchange program—it would be inappropriate to have the person responsible for the overall management of the court absent on an exchange for an extended period.

Judicial officers will generally continue to be remunerated, and to accrue pension entitlements, as if they are undertaking their substantive role in their home jurisdiction.

Subject to any agreement between the relevant heads of jurisdiction, where a State or Territory judicial officer sits in another jurisdiction other than by way of a two-way exchange arrangement, the host jurisdiction will reimburse the home jurisdiction for the salary of the judicial officer. Other matters, such as expenses associated with the exchange, are also covered by the agreed principles.

The proposed exchange program will contribute to the growth of jurisprudence, and benefit both participating judicial officers and jurisdictions through exposure to new ideas, improved court procedures, and perspectives on the court system.

The doctrine of incompatibility of office essentially provides that certain office holders cannot simultaneously hold incompatible offices.

The Judicial Officers Act 1986 currently provides that the doctrine of incompatibility of office does not operate to prevent a judicial officer from being appointed to act in another judicial office, or to require the surrender or vacation of the original office as a result of the new appointment.

The bill will remove any uncertainty that the doctrine of incompatibility of office does not operate to prevent a judicial officer from being appointed to any other court or tribunal, whether the judicial officer's appointment is in an acting, temporary or permanent capacity.

This principle will also extend to appointments in jurisdictions outside New South Wales and the bill clarifies that it applies to all tribunals having judicial or quasi-judicial functions. For example, it will make it clear that the doctrine does not prevent a judicial officer from sitting on a tribunal such as the Medical Board or the Workers Compensation Tribunal, while still holding office as a Supreme Court or District Court judge.

The proposed judicial exchange program facilitated by this bill will expose judicial officers to a diversity of work and systems in other courts. Jurisdictions involved in the exchange will benefit from new ideas and improvements to their courts. Judges will gain greater experience and perspective on their role in the court system. With this bill, the NSW Government is leading the way in establishing this program.

I commend the bill to the House.