

CRIMINAL PROCEDURE AMENDMENT (JUSTICES AND LOCAL COURTS) BILL

CRIMES (LOCAL COURTS APPEAL AND REVIEW) BILL

JUSTICES LEGISLATION REPEAL AND AMENDMENT BILL

Bills introduced and read a first time.

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [5.14 p.m.]: I move:

That these bills be now read a second time.

The procedures in the Local Court are in need of reform. The Local Court in New South Wales handles approximately 220,000 cases each year. Almost 98 per cent of all criminal prosecutions and more than 80 per cent of civil actions are dealt with in the Local Court. At present, the Justices Act 1902 sets out the procedures to be followed for criminal cases and statutory applications in the Local Court. The Act, almost a century old, is actually a consolidation of even older colonial legislation. It focused on the role of Justices of the Peace sitting in Police Courts, a system that bears no resemblance to the present arrangement of magistrates sitting alone and sometimes assisted by registrars. As a consequence, the Justices Act 1902 has been amended hundreds of times in an attempt to graft contemporary practices and procedures onto the original structure. The Act is complex, disjointed, procedure oriented and difficult to interpret. It contains antiquated rules and practices that are difficult to adapt to accommodate technological and social change. It has created impediments to court efficiency. I am pleased to present a package of new legislation to replace the Justices Act 1902.

The new package sets out clear, streamlined procedures for commencing and hearing cases in the Local Court. The language is simple and the requirements clear, consistent and readily understandable. Access to justice and respect for the law are partly dependent upon an understanding of it. Members of the community who are presumed to know the law are entitled to have it expressed in a form they can understand. This new package removes the antiquated technical detail from the legislation. It provides a framework for court operations and allows for rules to be made to cover technical detail. The rules can then be efficiently modified to accommodate changes in technology and improved work practices.

The reform process has involved extensive consultation over a number of years. A Justices Act review discussion paper was circulated in 1992. A draft bill was also circulated but it was considered to be too long, too detailed and procedurally oriented. It offered no improvement on the old regime. The review project languished under the previous Government. My predecessor, the former Attorney General, the Hon. Jeff Shaw, revived the project and set about reforming the procedures of the Local Court. The most pressing problems were addressed in a number of legislative changes introduced in the late 1990s including the Fines Act 1996, the Justices Amendment (Briefs of Evidence) Act 1997, the Justices Amendment (Procedure Act) 1997 and the Justices Legislation Amendment (Appeals) Act 1998. A further review of the remaining provisions of the Justices Act 1902 was undertaken by a working party comprising senior officers of the Attorney General's Department and senior magistrates from the Court Management and Technology Committee.

The working party recommended the repeal of the Justices Act 1902 and circulated a draft bill to replace it. Comments and submissions were received from court administrators, judges and

magistrates, the Law Society, the Bar Association, the Director of Public Prosecutions, the Legal Aid Commission, the Police Service and the Domestic Violence Advocacy Service. Responses supported the need for reform and simplification. Parties called for an overhaul of procedures to improve access to justice and to increase understanding and respect for the system. Clients suggested that a reform package be drafted by Parliamentary Counsel for exposure and further comment.

A Local Court specialist was seconded to identify the inefficiencies in the current procedures and design an effective legislative structure for the simplified processes. The redesign project is now complete and the exposure drafts were tabled on 20 September. The revised legislative structure will simplify the Local Court processes from start to finish. The confusing array of forms, terminology, actions, issuing procedures, service provisions and technical rules are to be replaced by clear, simple procedures. The reform package has two main streams: one for criminal matters and the other for non-criminal statutory applications.

The package consists of three bills, being the Justices Legislation Repeal and Amendment Bill, the Criminal Procedure Amendment (Justices and Local Courts) Bill and the Crimes (Local Courts Appeal and Review) Bill. The Justices Legislation Repeal and Amendment Bill repeals the Justices Act 1902 and sets out the new structure for the Local Court. The amendments to the Local Courts Act 1982 define the functions of magistrates, registrars and deputy registrars. This will increase court efficiency by allowing registrars to handle most of the routine administrative work that comes before the court. Magistrates will then have more time to devote to hearing cases.

The bill sets out clearly the procedure for dealing with non-criminal applications. Under the bill, proceedings are commenced by serving an application notice upon the other party and filing it with the court. Police and public officers will be permitted to issue and serve application notices. Private applicants will commence proceedings by serving an application notice signed by a registrar of the Local Court. The current method is time consuming and labour intensive. Government authorities and police are required to attend court registries to have informations sworn before a justice, summonses prepared, and the documents returned to them for service, and then to serve the respondent and return to the court to swear and file an affidavit of service. The new bill allows police, for example, to prepare the application themselves, hand it to the respondent on the spot, complete an endorsement that the document has been served and then send the document to the court. Under the new procedures police and public officers can commence proceedings without leaving their workplace to go to the court registry.

The requirements for service of documents will be set out in the rules. It is anticipated that the rules will allow service of application notices by parties, licensed commercial agents and Sheriff's officers. Under the current system, police are used to serve thousands of summonses that are not related to criminal cases. Allowing parties to applications to make their own service arrangements will generally mean that service can be effected more quickly and police will have more time to perform police duties. The Justices Legislation Repeal and Amendment Bill also clearly sets out the rights and duties of the parties in relation to representation, evidence, costs, rules, enforcement, appeals and contempt of court.

Placing these matters in the Local Court Act 1982 is a sensible and logical step. District Court procedure is set out in the District Court Act 1973 and Rules. Supreme Court procedure is set out in the Supreme Court Act 1970 and Rules. This bill places local court procedure in plain English in the Local Court Act 1982, making it easier to find and understand. The bill amends the Local Court (Civil Claims) Act 1970 to put appeal provisions into the civil legislation. Previously, civil appeals were conducted under the same provisions of the Justices Act 1902 that dealt with criminal appeals. The new civil appeal section is much shorter and clearer than the previous provisions because it is

specifically designed to cover civil matters rather than attempting to adapt criminal provisions to civil cases. The insertion of the appeal provisions into the Local Court (Civil Claims) Act 1970 means that all the Local Court civil procedures can be found in one Act.

The Criminal Procedure Amendment (Justices and Local Courts) Bill sets out the procedure for dealing with criminal matters in the Local Court. The bill amends the Criminal Procedure Act 1986. This means that all the provisions for dealing with criminal cases across New South Wales jurisdictions will be found in the one piece of legislation. The procedure for commencing criminal prosecutions in the Local Court has been simplified in the same way as non-criminal offences. Police and public officers will be able to issue and serve court attendance notices on the spot without the need to attend a court registry to swear an information and have a summons issued. Previously it was much easier for police to charge offenders than issue a summons. The new procedures provide one simple method of commencing a criminal prosecution. The Criminal Procedure Amendment (Justices and Local Courts) Bill includes the provisions that are currently in the Supreme Court (Summary Jurisdiction) Act 1967 to ensure that all summary offences are dealt with the same way, creating greater certainty and consistency for court users.

The third bill in the new package is the Crimes (Local Courts Appeal and Review) Bill. This bill consolidates and simplifies the criminal appeal and review provisions of the Justices Act 1902. The appeal provisions were substantially amended by the Justices Legislation Amendment (Appeals) Act 1998 and were not as antiquated as other sections. The new bill consolidates the existing law. The bill has provided an opportunity to clarify some matters that have arisen since the 1998 Act and to arrange the sections in a way that makes the relevant law easier to find and understand. The bill makes it clear, for example, that the Land and Environment Court is to be the appeal court for all summary environmental offences. Under the previous provisions it was arguable that parties lodge appeals in either the Land and Environment Court or the Supreme Court. Clearly, it is desirable to have consistency in the appeal process. That is best achieved by having the same kinds of offences dealt with by the same appellate court.

This package of legislation makes substantial and long-awaited changes to the operation of local courts of New South Wales. The Government is committed to improving the efficiency of the justice system. This package makes it simpler and quicker to start and run a case in the Local Court. It makes it simpler and quicker to find and understand the law and rules that are used in the court. Local courts play a vital role in the New South Wales legal system. They handle more than 98 per cent of all criminal cases. For the vast majority of people having contact with the justice system, their experience will begin and end in a local court. The reform package for local courts will have an impact on many people and organisations in the community. The reforms are comprehensive, covering the whole field of the court's operations. For this reason the Government allowed this package of bills to sit on the table of this House in September to provide an opportunity for people to put forward their views on the bills. Submissions were sought from a wide range of stakeholders.

The Chief Magistrate has supported and assisted the review project from inception. She has expressed strong support for the new legislative package. From 12 November to 15 November the legislative package was discussed with metropolitan magistrates at a series of seminars arranged by the Judicial Commission of New South Wales. Approximately 70 magistrates attended the workshops and provided comment and analysis of the proposed legislation. A number of drafting issues arose and some minor procedural differences between the current law and the new package were identified and subsequently resolved. The seminar series confirmed that there was, overall, enthusiastic support from the magistrates for the reform package. Detailed submissions were received from the President of the Industrial Relations Commission, the Chief Judge of the Land and Environment Court, the Chief Judge of the Compensation Court, the President of the Administrative

Decisions Tribunal, the Bar Association, the Legal Aid Commission, the New South Wales Police Service, the Director of Public Prosecutions, the Public Defender, the State Crown Solicitor, the District Court and the State Debt Recovery Office.

The legal stakeholder submissions supported the structure and contents of the new package of legislation. The Bar Association commented that review and rationalisation of the Justices Act is long overdue. The Legal Aid Commission was satisfied that the draft legislation generally simplifies and consolidates the legislation. The Public Defender noted that the inclusion of the procedural provisions about summary prosecutions in the Criminal Procedure Act is a very worthwhile reform, and that it was a worthwhile exercise to modernise and simplify the provisions regarding appeals. Stakeholders also raised a number of drafting and interpretation issues that were thoroughly considered and discussed with Parliamentary Counsel. Minor amendments were made to ensure that the new language had not inadvertently changed the substantive law, and that the meaning and application of sections was clear and unambiguous.

The clear, modern language and presentation also exposed existing anomalies that had been hidden by the disjointed structure and antiquated language of the old legislation. The amendments to the package as a result of the wide consultation and quality submissions received since exposure have further improved this body of legislation. The Government is committed to improving the efficiency of the justice system. This legislative package delivers a complete overhaul of local court operations and summary procedure that simplifies the processes of the court and delivers substantial benefits. The modern, clear language and logical presentation makes the law relating to summary procedure easier to find and easier to understand for the judiciary, the lawyers, the police, businesspeople, public officers and, most importantly, for the hundreds of thousands of members of the community who use the local courts each year. I commend the package of bills to the House.

Debate adjourned on motion by Mr Maguire.