Bill introduced on motion by Mr Greg Smith.

Agreement in Principle

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [10.29 a.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce the Courts and Crimes Legislation Amendment Bill 2011. The purpose of the bill is to make miscellaneous amendments to courts and crimes-related legislation, as part of the Government's regular legislative review and monitoring program. The bill will amend a number of Acts to improve the efficiency and operation of the State's courts and tribunals and criminal laws. I will now outline each of the amendments in turn. Items [1] to [4] of schedule 1.1 amend the Criminal Procedure Act 1986 to apply a uniform maximum jurisdictional limit in the Local Court of two years imprisonment where that court is dealing with indictable offences summarily. The indictable offences that are capable of being dealt with summarily are set out in tables 1 and 2 of schedule 1 to the Criminal Procedure Act.

At present there are a number of offences appearing in tables 1 and 2 that have a specified maximum penalty of 12 or 18 months imprisonment if proceeded with in the Local Court. An increase in the jurisdictional limit to two years for all offences in the tables will ensure the Local Court has adequate sentencing powers for these offences. The Sentencing Council considered that the current system invited or at least risked error on the part of police or prosecuting authority that the matter could be adequately dealt with in the Local Court when in reality the maximum term of imprisonment may be capped at 12 or 18 months. Amending the Criminal Procedure Act to apply a uniform two-year limit will ensure that the Local Court has adequate sentencing power in these matters, should the election be made to deal with the offence in that jurisdiction.

Items [5] to [10] of schedule 1.1 amend the Criminal Procedure Act 1986 to simplify the procedures for random samples of child abuse material in prosecutions relating to child abuse material offences. The amendments change the phrase "authorised analyst" to "authorised classifier" where it appears in sections 289A and 289B. This change in terminology is needed as the officer who performs this role is required to classify the child abuse material contained in the random sample. The bill will also amend section 289B to provide that the analysis must be of a random sample of seized material as opposed to a random sample of just the child abuse material. This amendment will allow police to take a more representative sample of the material, including any innocuous material, rather than just a sample of child abuse material.

The sample must be of seized material which is broadly defined in the bill to include material that has come into the possession of a police officer in the course of exercising his functions. This may include material handed in to a police officer or material seized pursuant to a warrant. The amendments also bring the legislation into line with present police procedure. A safeguard exists in the legislation as section 289B (6) will require that the defence have an opportunity to view all the seized material before the random sample evidence will be

admitted. The amendments also remove the requirement in section 289B (4) that the sample and examination be conducted in accordance with the regulations.

Schedule 1.2 amends the Criminal Procedure Regulation to define the term "authorised classifier" to include a member of the NSW Police Force who has undertaken training in the classification of child abuse material that is conducted or arranged by the NSW Police Force. I note that under the previous provision the "authorised analyst" was not required to have undertaken any particular training. The bill also amends provisions in the Criminal Procedure Act 1986 relating to sexual assault communications privilege. Sections 297 and 298 of the Act limit the production and disclosure of documents recording a protected confidence. The amendments will clarify that the court may consider documents to determine whether they contain a protected confidence, notwithstanding the limits imposed by sections 297 and 298. The regulation-making power in section 305A of the Criminal Procedure Act 1986 enables regulations to be made in relation to subpoenas in specified sexual assault proceedings. This power will be amended to provide that the regulations will apply to subpoenas in any criminal proceedings if the subpoena requires production of a document recording a counselling communication.

Items [14], [15] and [16] of schedule 1.1 amend schedule 1 of the Criminal Procedure Act to provide that certain indictable offences under the Property, Stock and Business Agents Act 2002 and the Conveyancers Licensing Act 2003 can be tried summarily before a Local Court. Currently, charges relating to these fraudulent accounting offences must be dealt with in the District Court, which can be a costly exercise, particularly for less serious matters. The amendments will allow less serious matters under these offences to be dealt with summarily. This is consistent with the way in which similar offences such as larceny are dealt with under the Criminal Procedure Act, and does not prevent more serious matters being dealt with on indictment.

Schedule 1.3 will amend the Director of Public Prosecutions Act 1986 to clarify how the Judges Pensions Act 1953 applies to the Director of Public Prosecutions. The Director of Public Prosecutions is eligible for benefits under the Judges' Pensions Act 1953. However, a pension is not payable unless the Director of Public Prosecutions has served at least 10 years and reaches 60 years of age while in office, the same as for judges. The present Director of Public Prosecutions will not reach 60 years of age while in office, and will therefore not be eligible for a pension under the Judges' Pensions Act 1953 at the end of his fixed 10-year term.

Section 5 of the Judges' Pensions Act 1953, as it applies to judges, provides for a pension to be payable should a judge retire due to permanent disability or infirmity, notwithstanding the age at which this occurs. The proposed amendments will make it clear that the Director of Public Prosecutions is eligible for the pension under section 5 of the Judges' Pensions Act 1953, notwithstanding the fact that he or she may not be able to reach the age at which a pension is usually payable. Section 6 of the Judges' Pensions Act 1953, as it applies to judges, provides for a pension to be payable to the surviving spouse of a judge should the judge die whilst in office, notwithstanding the age at which this occurs. The pension payable is the same as that to which the judge's spouse would have been entitled if the judge served until age 72 and then retired and died.

However, again, it is not clear how this should apply to a director of public prosecutions who cannot reach 72 years of age while in office—the age of forced retirement. The proposed

amendments make it clear that should he or she die whilst in office, the surviving spouse is eligible for the pension under section 6 of the Judges' Pensions Act 1953. The proposed clarifications will ensure that the Director of Public Prosecutions is treated in the same way as any judge who is medically retired or dies whilst in office. The proposed amendments also clarify how sections 3 and 4 of the Judges' Pensions Act 1953 apply to the Director of Public Prosecutions, by linking the calculation of benefits to the age for vacation of office in schedule 1 to the Director of Public Prosecutions Act 1986—which is 72, the same as for judges. This is for clarification only and does not change the benefits payable.

Schedule 1 [4] to the bill amends section 13 of the Fines Act 1996, which governs the referral of unpaid court fines to the State Debt Recovery Office for the making of court fine enforcement orders. Currently, section 13 of the Fines Act requires court registrars to refer court fines to the State Debt Recovery Office if they have not been paid by their due date. The introduction of Justicelink in most New South Wales courts means that unpaid court fines can now be automatically referred to the State Debt Recovery Office electronically, without a registrar's involvement. Accordingly, the bill provides that section 13 (1) does not apply in courts that use an automated computer system to refer overdue fines to the State Debt Recovery Office. I commend the bill to the House.