



## Courts and Other Legislation Amendment Bill 2014

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#### Second Reading

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [8.23 p.m.], on behalf of the Hon. John Ajaka: 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 Government is pleased to introduce the Courts and Other Legislation Amendment Bill 2014.

The purpose of this bill is to make miscellaneous amendments to legislation affecting the operation of the courts of New South Wales, and other legislation administered by the Attorney General and Minister for Justice.

The bill is part of the Government's regular legislative review and monitoring program. It amends a number of Acts to improve the efficiency and operation of our courts, as well as the operation of various agencies within the Department of Attorney General and Justice.

I will now outline each of the amendments in turn.

#### Schedule 1—Amendments relating to annual reports

Schedule 1 of the bill makes amendments to the administrative process for tabling annual reports that fall within the Attorney's ministerial portfolio. The amendments enable annual reports to be tabled out of parliamentary session.

It is common for annual reports to be tabled out of session. Equivalent provisions can be found in a range of other New South Wales Acts, including the Annual Reports (Departments) Act 1985 and Annual Reports (Statutory Bodies) Act 1984.

However, some Acts within the Attorney General's portfolio do not contain provisions that allow for out-of-session tabling. As a result, a small number of annual reports cannot be tabled out of session in the Legislative Assembly, including annual reports under the Anti-Discrimination Act 1977, Inspector of Custodial Services Act 2012, Professional Standards Act 1994, Public Defenders Act 1995 and Workplace Surveillance Act 2005.

The amendments in schedule 1 of this bill will ensure that there is a single procedure in place for tabling all annual reports within the Attorney General's portfolio.

A unified procedure for tabling will make the administrative process simpler and more efficient for both the Office of the Attorney General and the staff in the Legislative Assembly tabling office. It will also ensure that Parliament receives these reports in a more timely manner than might otherwise be the case.

#### Schedule 2—Amendments relating to justices of the peace under the Justices of the Peace Act 2002

The bill contains two amendments to the Justices of the Peace Act 2002. The first amendment permits regulations to be made to vary the term of office of a Justice of the Peace, or JP.

There are currently more than 90,000 JPs in New South Wales, and a large number of these appointments will expire between June 2014 and February 2017. The number of expiring appointments will peak between October 2016 and February 2017.

Most JPs will need to be reappointed when their term expires, which will create a significant volume of administrative work. This amendment will enable reappointments to be distributed over a longer time frame, which will make the reappointment process more efficient and ensure that people do not experience delays when they apply to be reappointed.

The amendment will only enable an expiry date to be set that is no more than 12 months earlier or up to two years later

than the current five-year expiry date of a JP's term.

The second amendment to the Justices of the Peace Act would allow a JP to be temporarily suspended by the Attorney General where it is unclear whether he or she is fit to continue performing his or her functions.

The circumstances in which a JP could be suspended have been drafted to mirror equivalent provisions in the Act that provide for a JP to be permanently removed from office. These circumstances include where a JP becomes bankrupt or is convicted of an offence that is punishable by imprisonment for 12 months or more.

The amendment contains a safeguard to ensure that if a JP exercises a particular function while suspended (such as witnessing or certifying a document) the validity of the document cannot be challenged unless the person relying on the document knew or ought reasonably to have known that the JP was suspended.

#### State Records Act 1998

The bill also amends the State Records Act 1998 to exclude JPs from the record-keeping requirements in the State Records Act.

Many JPs in New South Wales are volunteers. Attempting to enforce the record-keeping requirements contained in the State Records Act would be administratively difficult. More importantly, it may also reduce the willingness of JPs to serve as volunteers.

The State Records Authority has been consulted and does not object to this amendment.

#### Schedule 3—Amendments relating to judicial officers

##### Industrial Relations Act 1996

Schedule 3.1 of the bill clarifies the operation of a clause that was introduced into the Industrial Relations Act 1996 by the Industrial Relations Amendment (Industrial Court) Bill 2013.

Schedule 2, Clause 10A of the Industrial Court Act permits a member who has retired from the Industrial Relations Commission to continue hearing certain part-heard matters.

This amendment clarifies that if the former member was the President, the member does not continue to exercise the functions of the President if they stay on to complete a part-heard matter.

The Industrial Relations Commission has been consulted regarding the drafting of this amendment and considers that the amendment is necessary to avoid any doubt about the operation of clause 10A.

##### Judicial Officers Act 1986

The amendments in schedule 3.2 of the bill amend the Judicial Officers Act 1986 to clarify that a report prepared by the Conduct Division of the Judicial Commission must be provided to the Judicial Commission and the judicial officer concerned.

The commission will also be empowered with discretion to provide the person who made the complaint about the judicial officer a copy of any report, or a summary of any such report, unless the Conduct Division has notified the commission in writing that this should not occur. These provisions were requested by the President of the Judicial Commission.

They will apply only when a complaint has been dismissed by the Conduct Division under section 26 of the Act, or where the complaint has been wholly or partly substantiated but referred to the head of jurisdiction for attention pursuant to section 28 of the Act.

Section 29 of the Judicial Officers Act 1986 already permits the Conduct Division's report to be provided to affected parties where the complaint has been referred to Parliament to consider whether the judicial officer should be removed.

##### Judges Pensions Act 1953

Schedule 3.3 of the bill relates to the Judges' Pensions Act 1953. That Act was amended in the year 2000 to provide a lump sum superannuation guaranteed benefit for judges and acting judges who are not eligible for a pension under the Act. This was required by the Commonwealth Superannuation Guarantee (Administration) Act 1992.

At present the lump sum entitlement calculated in part 3 of the Judges' Pensions Act 1953 is based on the 9 per cent superannuation guarantee percentage that was previously in section 19 (2) of the Commonwealth Superannuation Guarantee (Administration) Act 1992.

This percentage increased to 9.25 per cent from 1 July 2013 and the rate will continue to increase each 1 July until 2019. To ensure continued compliance with the Commonwealth Superannuation Guarantee (Administration) Act 1992, schedule 3.3 of the bill amends the Judges' Pensions Act 1953 to apply the correct percentage in each year, or part year, of judicial service that counts towards the lump sum benefit.

#### Schedule 4—Amendments relating to consular officers

The amendments contained in schedule 4 seek to give effect to an agreement made by the former Standing Committee of Attorneys-General [SCAG] in 1999 to authorise locally engaged staff at Australian overseas posts to take evidence, serve process and witness documents.

Currently, this work can only be done by high-ranking Australian diplomatic or consular officers, which is defined to include ambassadors, officers of the Australian Department of Foreign Affairs and Trade and persons appointed as honorary consuls.

There is no compelling reason why appropriate, locally engaged staff at overseas posts cannot also do this work. The persons employed at these posts have undergone stringent security and criminal record checks and many already have significant experience with this type of work.

Allowing locally engaged staff to do this work would facilitate faster and more convenient processes for consulates and for the people who seek their services.

#### Schedule 5—Other amendments

Schedule 5 of the bill makes a number of other minor amendments to various Acts.

##### Coroners Act 2009

Schedule 5.1 amends the Coroners Act 2009. Section 37 (2) of the Coroners Act requires the deaths in custody and police operations annual report to be made to the Attorney General within two months of the end of each reporting period.

As the end of the reporting period is 31 December, this means that the deadline for the report is 1 March of each year. The annual report must then be tabled in each House of Parliament within 21 days.

This deadline places an unreasonable deadline on the Coroner's Court, as it is extremely difficult to prepare the report by 1 March each year. In particular, the required data is generally not available early enough to allow the statistics to be crosschecked against Corrective Services and Police data sources.

Schedule 5 amends section 37 (2) of the Coroner's Act to require the report to be provided to the Attorney no later than 1 May each year. This will ensure that the Coroner's Court is provided with a more reasonable time frame in which to verify the data and finalise the report. The State Coroner supports this amendment.

##### Court Suppression and Non-publication Orders Act 2010

Schedule 5.2 amends the Court Suppression and Non-publication Orders Act 2010. The amendment provides that information that is subject to a suppression order may be lawfully provided to the Bureau of Crime Statistics and Research [BOCSAR] for the purpose of maintaining criminal statistics. This will ensure that BOCSAR statistics on criminal proceedings are comprehensive and do not exclude matters that are the subject of suppression orders.

The information obtained by BOCSAR will continue to be subject to the suppression order. This means that the information will continue to be treated as confidential.

##### Land and Environment Court Act 1979

Schedule 5.3 amends the Land and Environment Court Act 1979. Section 30 (2A) of the Land and Environment Court Act provides that a commissioner of the Land and Environment Court may not exercise functions in relation to proceedings arising under the Aboriginal Land Rights Act 1983 unless they have particular qualifications and experience.

The qualifications are: suitable knowledge of matters concerning land rights for Aborigines; and qualifications and experience suitable for the determination of disputes involving Aborigines.

It is appropriate that commissioners who hear matters under the Aboriginal Land Rights Act have special qualifications and experience.

However, because of the way the Land and Environment Court Act is currently drafted, commissioners must have the required qualifications when they are appointed to the court. If commissioners gain the required qualifications after they join the court, they still cannot hear matters under the Aboriginal Land Rights Act even though they are qualified to do so.

To ensure that all commissioners who are appropriately qualified can hear these matters, schedule 5.3 to the bill amends section 30 (2A) to enable commissioners to exercise functions under the Aboriginal Land Rights Act if, in the opinion of the Chief Judge, the commissioner has the required qualifications.

##### Supreme Court Act 1970

Schedule 5.4 amends section 69C of the Supreme Court Act 1970, which relates to stay of orders pending judicial review. The section provides that the execution of a sentence imposed as a consequence of a conviction, or any other order, is stayed when proceedings seeking judicial review are commenced.

However, the section does not operate to stay the execution of a sentence where a person is "in custody" when

proceedings seeking judicial review are commenced.

It is unclear whether the section currently operates to stay apprehended violence orders. It is also unclear whether a person serving a sentence by way of an intensive correction order or a home detention order is "in custody" for the purposes of the section.

To clarify this, schedule 5.4 to the bill amends 69C to specify that the section does not stay the operation of an apprehended violence order, and that a reference to a person who is "in custody" includes a person who is the subject of an intensive correction order or home detention order.

The amendments in this bill, although relatively minor in nature, will improve the administration of justice in this State. They will assist the courts and other agencies within the Department of Attorney General and Justice to perform their work more efficiently.

I commend the bill to the House.