COURTS AND OTHER LEGISLATION AMENDMENT BILL 2014

Bill introduced on motion by Mr Greg Smith, read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [10.11 a.m.]: I move:

That this bill be now read a second time.

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 New South Wales courts 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 now will outline each amendment in turn. Schedule 1 to the bill makes amendments to the administrative process for tabling annual reports that fall within the Attorney General's ministerial portfolio. The amendments enable annual reports to be tabled out of parliamentary session, which is a common process. Equivalent provisions can be found in a range of other New South Wales Acts, including the Annual Reports (Departments) Act 1985 and the 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, the Professional Standards Act 1994, Public Defenders Act 1995 and Workplace Surveillance Act 2005. The amendments in schedule 1 to the bill will ensure a single procedure is 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 Attorney General and Justice, and the staff in the Legislative Assembly Table Office. It will ensure also that Parliament receives these reports more timely than might otherwise be the case.

The bill contains two amendments to the Justices of the Peace Act 2002. The first permits regulations to be made to vary the term of office of a Justice of the Peace, or JP. Currently New South Wales has more than 90,000 Justices of the Peace and a large number of these appointments will expire between June 2014 and February 2017. Between October 2016 and February 2017 the number of Justices of the Peace needing reappointment when their term expires will peak, and this 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 people do not experience delays when applying to be reappointed. The amendment will 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 Justice of the Peace's term.

The second amendment to the Justices Act would allow a Justice of the Peace 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 Justice of the Peace could be suspended have been drafted to mirror equivalent provisions in the Act that provide for a Justice of the Peace to be permanently removed from office. These circumstances include where a Justice of the Peace becomes bankrupt or is convicted of an offence that is punishable by imprisonment for 12 months or more. It is disappointing that every month I seem to have to recommend striking off Justices of the Peace for misconduct, bankruptcy or convictions. This amendment contains a safeguard to ensure that if a Justice of the Peace exercises a particular function whilst suspended, such as witnessing or certifying a document, the validity of the document cannot be challenged unless a person relying on the document knew or ought reasonably to have known that the Justice of the Peace was suspended.

The bill amends the State Records Act 1998 to exclude Justices of the Peace from the record-keeping requirements of that Act. Many New South Wales Justices of the Peace are volunteers. Attempting to enforce the record-keeping requirements contained in the States Records Act would be administratively difficult; more importantly, it may reduce the willingness of Justices of the Peace to serve voluntarily. The State Records Authority has been consulted and does not object to this amendment.

Schedule 3 concerns amendments relating to judicial officers. 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 Relations Act permits a member who is 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.

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 partially 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.

Schedule 3.3 of the bill relates to the Judges' Pension Act 1953. That Act was amended in 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' Pension 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' Pension Act 1953 to apply the correct percentage in each year, or part year, of judicial service that counts towards the lump sum benefit.

The amendments contained in schedule 4 seek to give effect to an agreement with the former Standing Committee of Attorneys-General [SCAG] in 1999. For some reason that acronym has been removed and changed to SCLJ [Standing Council on Law and Justice] and will soon change again—probably to something even more unpronounceable. The agreement authorises locally engaged staff at Australian and overseas posts to take evidence, serve process and witness documents. Currently this work can be done only by high-ranking Australian diplomatic or consular officers, which is defined to include ambassadors, Office 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 deals with a number of minor amendments to various Acts. 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—something that my colleague the shadow Attorney General is familiar with—to be made to the Attorney General within two months from the end of each reporting period. It is read closely by all concerned. 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 within each House of Parliament within 21 days. This deadline places an unreasonable deadline on the Coroners 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 cross-checked against Corrective Services and Police data resources. Schedule 5 amends section 37 (2) of the Coroners Act to require the report to be provided to the Attorney no later than 1 May each year. This will ensure that the Coroners Court is provided with a more reasonable timeframe in which to verify the data and finalise the report. The State Coroner

supports this amendment.

Schedule 5.2 amends the Courts 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 the Bureau of Crime Statistics and Research statistics on criminal proceedings are comprehensive and do not exclude matters that are the subject of suppression orders. The information obtained by the Bureau of Crime Statistics and Research will continue to be subject to the suppression order. This means that the information will continue to be treated as confidential.

Schedule 5.3 amends the Land and Environment Court Act 1979. Section 32A 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 Aboriginals 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 of the bill amends section 32A 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.

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 considered to be in custody for the purposes of the section. To clarify this, schedule 5.4 to the bill amends section 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 a home detention order. The amendments in the bill, although relatively minor in nature, will improve the administration of justice in the State thereby assisting 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.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.