COURTS AND CRIMES LEGISLATION AMENDMENT BILL 2014

Bill introduced on motion by Mr Brad Hazzard, read a first time and printed.

Mr BRAD HAZZARD (Wakehurst—Attorney General, and Minister for Justice) [4.11 p.m.]:

That this bill be now read a second time.

The Government is pleased to introduce the Courts and Crimes Legislation Amendment Bill 2014. The bill is part of the Government's regular legislative review and monitoring program, and makes miscellaneous amendments to legislation affecting the operation of the courts and tribunals of New South Wales and other legislation administered by the Attorney General and Minister for Justice. I will now outline each of the amendments in turn.

Schedule 1 deals with amendments concerning the Civil and Administrative Tribunal. Schedule 1.1 amends the Children and Young Persons (Care and Protection) Act 1998 to restrict the proceedings in which a risk of harm report can be admitted into evidence before the NSW Civil and Administrative Tribunal [NCAT]. Before NCAT commenced, section 29 of the Children and Young Persons (Care and Protection) Act provided that risk of harm reports could be admitted into evidence only in the Guardianship and Victims Compensation Tribunals. Section 29 was unintentionally widened when the Civil and Administrative Legislation (Repeal and Amendment) Act 2013 commenced. As a result, risk of harm reports can now be admitted in all NCAT proceedings. While in practice NCAT would allow these reports into evidence only where they are relevant, it is important that risk of harm reports remain as confidential as possible. This amendment therefore re-establishes the previous position.

Schedules 1.2, 1.3 and 1.4 contain four amendments to the Civil and Administrative Tribunal Act 2013—the NCAT Act—and regulations. These amendments were proposed by the president of NCAT and are minor or technical in nature. The first amendment will allow NCAT to grant leave for a person to be represented by an Australian legal practitioner without specifying the practitioner by name. Currently, the NCAT Act permits leave to be granted to an identified representative only. This can be inefficient where, for example, a person is represented by Legal Aid and a different solicitor appears on each occasion. The second amendment will permit NCAT to revoke orders it makes to appoint a person as guardian ad litem for a party to represent a party, or that a person be separately represented. There may be situations where it is appropriate to revoke these kinds of orders; for example, if the person is not acting in the person's best interests.

The third amendment replaces references to the "Health Practitioner Division List" with "Health Practitioner List". This clarifies that there is no Health Practitioner Division of NCAT. It does not make any substantive change to how the list operates. The fourth amendment to the NCAT Act will allow senior professional members of the Guardianship Division to sit on internal guardianship appeals. The NCAT Act currently does not permit these members to hear appeals. This was a drafting oversight. Senior professional members have specialist expertise in guardianship matters and should

be permitted to hear internal appeals. Schedule 1.5 contains a minor amendment to section 12 of the Water Act 1912 to correct a drafting oversight. The amendment updates the Water Act to reflect the fact that NCAT is now responsible for making decisions for the purposes of the section.

Schedule 2 deals with amendments concerning guardianship. Schedules 2.1 and 2.2 contain minor and technical amendments to the Guardianship Act 1987 and Guardianship Regulation 2010 that were proposed by the President of the Guardianship Tribunal prior to the tribunal's integration into NCAT. The first amendment will ensure that enduring guardians are included as a party to guardianship applications and reviews of guardianship orders. Currently, enduring guardians must make an application for joinder to become a party, despite having sufficient interest to be included as a party, because their authority to make decisions is suspended by the operation of a guardianship order. This amendment will eliminate the need for these procedural hearings and will improve NCAT's efficiency.

The second amendment to the Guardianship Act ensures that a person with a power of attorney will be included as a party to applications to review a financial management order or review of an appointment of a manager. Presently, attorneys are included in applications for a financial management order, but not in applications for a review. An attorney's authority is suspended during the operation of a financial management order and may recommence if the order is revoked. The Government considers they have sufficient interest to be included as a statutory party in relation to reviews.
The third amendment will replace the term "alternative enduring guardian" with the term "substitute enduring guardian". The Guardianship Act allows an instrument of appointment of an enduring guardian to appoint another person to be an alternative enduring guardian who can exercise functions if the original guardian dies, resigns or has an incapacity. The word "alternative" may be misleading to the public because it may imply that either the alternative enduring guardian or the original enduring guardian can exercise functions at any time. This is clarified by replacing the word "alternative" with "substitute".

The fourth amendment will allow NCAT to proceed as if an application for a guardianship and/or financial management order has been made when reviewing the appointment of an enduring guardian without the need to first revoke the appointment. Section 6K of the Guardianship Act provides that on reviewing the appointment of an enduring guardian, NCAT may either revoke the appointment or confirm the appointment with or without varying the functions of the enduring guardian. Where NCAT has decided to revoke the appointment of an enduring guardian, it may proceed as if an application for a guardianship and/or financial management order has been made. The amendment will improve section 6K of the Guardianship Act by providing greater flexibility for NCAT to make decisions in the best interests of the appointor, especially where a guardianship or financial management order might be needed only for a short period.

The fifth amendment allows NCAT to renew and vary a guardianship order when reviewing the order. This amendment addresses situations where a person may request NCAT to review a guardianship order close to the end of the term of the order, and another review would otherwise be required within a short period. The sixth amendment to the Guardianship Act will allow people to apply for a financial management order for themselves, and provide that a person subject to a

financial management order can apply for the review of an appointment of a financial manager. The seventh amendment replaces a reference to the now repealed section 68 of the Guardianship Act with a reference to the section that has replaced it—section 61 of the Civil and Administrative Tribunal Act.

The eighth amendment will allow for NCAT to review both a financial management order and appointment of a manager at the same time. Presently, a financial management order and the appointment of the manager are considered to be two separate orders. This causes confusion upon reviews. This amendment will also clarify that the power to vary an order includes the power to insert or remove an exclusion pursuant to section 25E. This will ensure that a tribunal constituted by fewer than three members can insert or remove exclusions upon the review of an order.

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The ninth and final amendment to the Guardianship Act will allow NCAT to review the appointment of a manager within a specified time. For instance, NCAT may appoint the NSW Trustee and Guardian as a manager to resolve a particular legal and financial issue, with a review within 12 months if it is considered that a suitable private person could take over once that issue has been resolved. Overall, the amendments to the Guardianship Act will provide NCAT with flexibility to manage guardianship orders by streamlining the tribunal process and result in improved efficiency.

I turn to schedule 3, amendments concerning acting judicial officers. Schedules 3.1 to 3.8 contain amendments to various court and tribunal Acts. Schedules 3.1, 3.2, 3.3, 3.4 and 3.7 amend the Children's Court Act 1987, District Court Act 1973, Drug Court Act 1998, Dust Diseases Tribunal Act 1989 and Local Court Act 2007 to enable the Attorney General to appoint a judicial officer who can act as head of jurisdiction for a particular absence or for any absence that occurs from time to time. All court and tribunal Acts contain provisions that govern who is to act as head of the court during an absence in office. In some cases, either the Governor or the Attorney must provide a judge with a commission to act. In other cases, default provisions allow the next most senior judge to act if no commission is provided. However, this is not always the case. This can cause difficulties, especially where the head of the court needs to take leave unexpectedly.

These amendments will provide the Local Court, District Court, Dust Diseases Tribunal, Drug Court and Children's Court with consistent provisions regarding acting arrangements. The heads of these courts support the amendments. Not all court and tribunal Acts are being amended. The Coroner's Court, Workers Compensation Commission and NCAT already have an equivalent provision. The Chief Justice of the Supreme Court, Chief Judge of the Land and Environment Court and President of the Industrial Relations Commission advised that the amendments are not required in their particular courts. Schedule 3.2 to the bill contains an amendment to the District Court Act 1973 that will allow retired judges of the Family Court of Australia to act as judges of the District Court after they reach the age of 72.

Currently, section 18 (4A) of the District Court Act permits retired Federal Court judges to act as District Court judges after they turn 72, as well as retired judges of other State and Territory supreme and county courts. However, there is no equivalent provision for retired Family Court judges. A number of former Family Court judges hold commissions as acting judges of the District

Court. These judges will currently have to leave their positions when they turn 72. This amendment will enable those judges to continue acting after the age of 72, until they reach the age of 77. The Chief Judge of the District Court supports the amendment. Schedules 3.2, 3.5, 3.6, 3.7 and 3.8 amend the Local Court Act 2007, District Court Act 1973, Supreme Court Act 1970, Industrial Court Act 1996 and Land and Environment Court Act 1979 to enable acting judges and magistrates to be appointed for a period of up to five years.

Currently, acting judges and magistrates can be appointed for only 12 month terms. These appointments can be renewed each year until the statutory age limit is reached. In the Local Court, District Court, Industrial Court, and Land and Environment Court the age limit is 75. In the Supreme Court, the age limit is 77 where a judge retires at 72. This amendment will enable acting magistrates and judges to be appointed for up to five years. The provision still allows acting judges to be given shorter terms. In order to authorise five-year appointments, the statutory age limit for all acting judges will also be lifted to 77 years. Lifting the acting judge age limit to 77 years will enable highly talented and experienced judges to keep working when they are able and willing to do so.

Amendments relating to the Crimes (Administration of Sentences) Act 1999 schedule 4.1 amends the Crimes (Administration of Sentences) Act 1999 to enable information exchange between the Commissioner of Corrective Services and the Commissioner of Fines Administration. This is limited to information that assists in the exercise of both commissioners' statutory functions. The amendment will permit Corrective Services NSW to disclose certain details about inmates to help the Commissioner of Fines Administration identify which inmates in custody have outstanding fines. The Commissioner of Fines Administration can then take steps to help those inmates, such as delaying fine enforcement action while they are in custody and offering them appropriate payment options.

The amendments will also enable Corrective Services NSW to help eligible inmates make arrangements to work off the value of the fine by undertaking certain programs, treatment and counselling in custody through a work and development order under section 99B of the Fines Act 1996. This is especially important as we know that where people have outstanding debt on leaving prison, their chances of reoffending are increased. To achieve this, the amendments are intended to override the Privacy and Personal Information Protection Act 1998, which would otherwise prevent Corrective Services NSW from disclosing personal information about inmates for these purposes, without their consent. By permitting the sharing of limited information about inmates, this amendment will enable relevant agencies and inmates to identify whether there are outstanding fines and to take steps to resolve them. This amendment is modelled on a similar provision already in the Children (Detention Centres) Act 1987.

I turn to amendments relating to the Jury Act 1977. Schedule 4.2 to the bill contains amendments to the Jury Act 1977 that will enable Roads and Maritime Services to provide customer identification numbers to the Sheriff's Office for the purpose of determining whether a person should be excluded from jury service. Currently, Roads and Maritime Services is authorised to provide the Sheriff's Office with driver licence numbers, but these are not always the same as customer identification numbers. This amendment will enhance the ability of the Sheriff's Office to identify people who are ineligible for jury service because of their criminal history.

I turn to amendments relating to the Land and Environment Court Act 1979. Schedule 4.3 to the bill contains several minor amendments to the Land and Environment Court Act 1979. The first amendment will add class 4 proceedings to the classes of proceedings in the Land Environment Court where a commissioner may assist judges. Class 4 proceedings relate to civil enforcement and judicial review of decisions under planning and environmental laws. The proposed amendment will permit commissioners to assist and advise the judge adjudicating on a matter. Commissioners can already do this in classes 1, 2 and 3 of the courts and this amendment will ensure that commissioners can provide their specialist, non-legal expertise to the benefit of the court in appropriate class 4 matters. The remaining amendments to the Land and Environment Court Act in schedule 4.3 remove several references to repealed legislation in provisions establishing the court's appeal jurisdiction. The references are now obsolete as no relevant appeals could now be brought.

I turn to amendments relating to the New South Wales Trustee and Guardian Act 2009. Schedule 4.4 to the bill contains a minor amendment to the New South Wales Trustee and Guardian Act 2009 to allow the Mental Health Review Tribunal [MHRT] to revoke a financial management order relating to a person who is, or was and has now ceased to be, a forensic patient, if satisfied the person has capacity to manage their own affairs or it is in their best interests. In addition, the amendment will ensure that a financial management order for a person who is, or was and has now ceased to be, a civil mental health patient can be revoked by NCAT, if satisfied that the person has capacity to manage their own affairs or it is in their best interests.

The amendment was suggested by the MHRT. In part, by including a reference to forensic patients, it corrects an oversight that occurred when the forensic patient provisions were separated from civil patient provisions in 2007. It also enables the MHRT to revoke an order when a person remains in a mental health facility but has not yet been discharged. Managing one's own affairs can be an important step in a patient's rehabilitation. This proposal parallels the powers set out in section 25P of the Guardianship Act 1987.

I turn to amendments relating to the Oaths Act 1900. Schedule 4.5 to the bill contains three minor amendments to the Oaths Act 1900 and clarifies that New South Wales Justices of the Peace [JPs] may witness statutory declarations and affidavits for use in tribunals and arbitrations in Australian jurisdictions other than New South Wales. Currently, the Oaths Act refers to witnessing non-New South Wales statutory declarations and affidavits for use in court proceedings outside of New South Wales. The Crown Solicitor's Office has advised that the word "court" in the Oaths Act should not necessarily be interpreted as including a tribunal.

The first amendment to the Oaths Act clarifies that New South Wales JPs may witness statutory declarations and affidavits intended for use in a tribunal in an Australian jurisdiction outside New South Wales. The second amendment amends the Act so that documents may be witnessed by New South Wales JPs for the purpose of any arbitration whether it is held in New South Wales or interstate. This clarifying amendment is required to avoid any doubt. Section 26 of the Oaths Act currently authorises JPs to witness statutory declarations interstate only where they are required for court proceedings.

The third and final amendment to the Oaths Act will authorise New South Wales JPs to witness in New South Wales all types of statutory declarations required for use interstate, to ensure that JPs are authorised to witness statutory declarations required for public administration purposes as well as court proceedings. These amendments are necessary to ensure that JPs in New South Wales can witness affidavits and statutory declarations required for use in Australian jurisdictions outside New South Wales. The amendments will also apply retrospectively to any oaths, affidavits or statutory declarations made or witnessed before the commencement of the amendments made by this bill.

I will now turn to the amendment to the Trees (Disputes Between Neighbours) Act 2006. Schedule 4.6 to the bill contains amendments to part 2A of the Trees (Disputes Between Neighbours) Act 2006 to include land zoned "rural residential", or its current zoning equivalent. Currently, home owners located in rural residential zoned properties have no recourse under the Trees (Disputes Between Neighbours) Act to minimise the impact of high hedges located on neighbouring properties. The only legal option available to rural residential home owners is to sue their neighbour under the tort of nuisance, which can involve large financial and time costs.

This amendment will enable rural residential home owners to make an application to the Land and Environment Court to resolve disputes with neighbours relating to planted hedges that are over the height of 2.5 metres that are causing severe obstruction of sunlight to a window or obstruction of views. This amendment implements the sole legislative recommendation of the 2013 statutory review of the Trees (Disputes Between Neighbours) Act. It provides rural residential zoned home owners with the same legal remedies afforded to home owners in residential areas, delivering rural residential home owners with a cost-effective means of resolving disputes regarding high hedges. Overall, the amendments in this bill will improve the administration of justice in this State. They will assist the courts and other agencies within the Department of 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.