



## NSW Legislative Assembly Hansard

### Courts Legislation Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 28 March 2006.

#### Second Reading

**Ms ALISON MEGARRITY** (Menai—Parliamentary Secretary) [7.52 p.m.], on behalf of Mr Bob Debus: I move:

That this bill be now read a second time.

This bill makes miscellaneous amendments to courts-related legislation, and is part of the Attorney General's regular legislative review and monitoring program. Schedule 1 will amend the Civil Procedure Act 2005. Clause 18 of the Civil Procedure Regulation 2005 provided that proceedings in the Local Court and District Court were taken to have been dismissed if there was no progress after 12 months. Clause 18 has been repealed because it is operated more widely than intended, and because it was unnecessary as the Local Court and District Court could use Uniform Civil Procedure Rule 12.9 to dismiss proceedings where there was no progress. As a small number of cases may have been affected by clause 18, the bill will insert a new part 3 in schedule 6 of the Act to provide that clause 18 is to be taken as never having been made and that any proceeding that was dismissed under the clause may be continued accordingly.

Schedule 2 to the bill makes a number of amendments to the Criminal Procedure Act 1986. First, it amends the Act to prevent professional costs from being awarded to the prosecution where a person who has received a penalty notice elects to have the matter dealt with by the court and lodges a written plea of guilty within the required time frame. In 1998 the Government introduced reforms to enable defendants in summary criminal proceedings to inform the court of their plea in writing. A key objective of those reforms was to streamline procedures by reducing time-consuming, costly and unnecessary appearances before the court.

The Government is aware of a number of cases where people who received penalty notices and lodged a written plea of guilty with the court had costs awarded against them in their absence. Those costs amounted to hundreds of dollars. The Government is concerned that the imposition of costs in those circumstances is likely to undermine the effectiveness of the objective of the 1998 reforms.

The Criminal Procedure Act will be amended to change the date for lodgement of written pleas from five to seven working days prior to the first date on which a person is required to attend court. The Criminal Procedure Act will be amended to provide that costs orders may be made only against the prosecution in summary criminal proceedings in the Supreme Court and other higher courts where proceedings were brought or conducted in an improper manner. This will align the situation in the Supreme Court and other higher courts to that which currently exists in the Local Court.

The Act will be amended to provide that the Supreme Court and other higher courts may make costs orders against a party in summary criminal proceedings, on an adjournment, due to unreasonable conduct or delays. Once again this will align the situation in the Supreme Court and other higher courts to that which currently exists in the Local Court. Schedule 3 will amend the Crown Prosecutors Act 1986 to specifically enable Crown Prosecutors to exercise their functions on a part-time basis by arrangement with the Director of Public Prosecutions.

Schedule 4 amends the District Court Act 1973 to give a right of appeal to the Supreme Court against interlocutory orders of the Judicial Registrar of the District Court. Currently, only judgments or final orders of the Judicial Registrar may be appealed. Given that interlocutory orders of the Judicial Registrar may affect a party's substantive legal rights, it is appropriate that there be an avenue for appeal against such orders.

Schedule 5 amends the Judges Pensions Act 1953 to enable judges' pensions to be paid fortnightly instead of monthly. This will create efficiencies by enabling all pensions and salaries paid through the Attorney General's Department's payroll system to be processed at the same time. Schedule 6 amends the Land and Environment Court Act 1979 to enable commissioners of the court to make costs orders with the concurrence of any judge of the Court. Currently the concurrence of the Chief Judge is required and this results in inconvenience and delay if the Chief Judge is away, and creates potential conflicts of interest where the Chief Judge has had a connection with individuals or corporations that are litigants in the court. Schedule 7 amends section 353 (3) of the Legal Profession Act 2004 to make an amendment consequential to the amendment made by Schedule 2 [9].

Schedule 8 amends the Local Courts Act 1982 to increase the age to which acting magistrates may be appointed from 72 to 75. This will make the age limit for acting magistrates in the Local Courts the same as that for acting judges in other courts. Schedule 9 amends the Public Defenders Act 1995 to specifically enable public defenders to exercise their functions on a part-time basis by arrangement with the Senior Public Defender.

Schedule 10 amends the Public Trustee Act 1913 to enable the Public Trustee to receive funds from the Supreme Court, the District Court, the Local Court and the Dust Diseases Tribunal, which has been paid into court, for investment in the Public Trustee's common fund.

The Civil Procedure Act and Rules, which apply to the Local Court, the District Court, the Supreme Court and the Dust Diseases Tribunal, provide for the payment of funds by registrars into the Public Trustee's common fund. However, the Public Trustee Act currently only allows the Public Trustee to receive funds for payment into the common fund from the Supreme Court. A consequential amendment is needed to enable the Public Trustee to receive funds from all courts and tribunals covered by the Civil Procedure Act and Rules. These amendments will improve the efficiency and operation of the courts. I commend the bill to the House.