



## NSW Legislative Council Hansard

### Courts Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 10 May 2006.

#### Second Reading

**The Hon. TONY KELLY** (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [8.17 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

The bill provides for 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 and District courts were taken to have been dismissed if there was no progress after 12 months. Clause 18 has been repealed because it was being operated more widely than intended, and because it was unnecessary as the Local and District courts could use Uniform Civil Procedure Rule 12.9 to dismiss proceedings where there is 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, the Act will be amended to prevent professional costs from being awarded to the prosecution when 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. I seek leave to incorporate the remainder of my speech in *Hansard*.

#### Leave granted.

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 these 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. These costs amounted to hundreds of dollars. The Government is concerned that the imposition of costs in these circumstances is likely to undermine the effectiveness of the objective of the 1998 reforms.

Second, the *Criminal Procedure Act* will be amended to provide that costs orders may only be made 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.

Third, 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.

#### **Amendments to the Crown Prosecutors Act 1986**

Schedule 3 of the bill 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.

#### **Amendments to the District Court Act 1973**

Schedule 4 of the bill will amend 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 judgements 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.

#### **Amendments to the Judges Pensions Act 1953**

Schedule 5 of the bill will amend 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.

***Amendments to the Land and Environment Court Act 1979***

Schedule 6 of the bill will amend the *Land and Environment Court Act 1979* to enable Commissioners of the Court to make cost 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.

***Amendment of the Legal Profession Act 2004***

Schedule 7 of the bill will amend s.353(3) of the *Legal Profession Act 2004* to make an amendment consequential to the amendment made by Schedule 2, clause [9].

***Amendments to the Local Courts Act 1982***

Schedule 8 will amend 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.

***Amendments to the Public Defenders Act 1995***

Schedule 9 of the bill will amend 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.

***Amendments to the Public Trustee Act 1913***

Schedule 10 of the bill will amend the *Public Trustee Act 1913* to enable the Public Trustee to receive funds from the Supreme, District and Local Courts 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, District and Supreme Courts 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.