



NSW Legislative Assembly Hansard

Courts Legislation Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Friday 27 May 2005.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [10.20 a.m.], by leave:
I move:

That this bill be now read a second time.

This bill provides for miscellaneous amendments to legislation affecting the operation of the courts of New South Wales. Schedule 1 amends the Administrative Decisions Tribunal Act 1997 by clarifying the qualifications of members who are entitled to determine proceedings in the Retail Leases Division of the tribunal. The present provisions allow only a member who is a retired judge of the Supreme Court or Federal Court or who has equivalent experience or qualifications. A recent interpretation of this provision in a decision by the Supreme Court meant that only one current member of the tribunal could meet the criteria. The amendment will extend the class of members entitled to determine these cases to include any current, retired or acting judge or a deputy president.

The amendment is designed to ensure that members who had previously determined these cases can continue to do so. The amendments will also validate previous decisions made by these members. Schedule 2 amends the Anti-Discrimination Act 1977 by inserting section 88B to make it clear that where a complaint is lodged in more than one jurisdiction, the Anti-Discrimination Tribunal is to have regard to any decision made in other proceedings relating to the complaint. Schedules 3, 13 and 14 relate to the change in title of Masters of the Supreme Court to Associate Judges. This change has the support of the Chief Justice. The title of Associate Judge is more easily understood by the public and reflects the position that Masters hold within the hierarchy of judicial officers of the Supreme Court. The use of the term "Master" is inconsistent with the use of non-gender specific titles.

The change in title involves a minor amendment to section 52 of the Constitution Act 1902 by inserting "Associate Judge" in the definition of judicial office. The Parliamentary Counsel's Office has advised that a minor amendment of this nature does not require a referendum. Other consequential amendments have been made to a number of other Acts, including the Supreme Court Act 1970 and the Judicial Officers Act 1986. The amendments will not have any adverse impacts on officers currently appointed as Masters of the Supreme Court. Masters will automatically be appointed as Associate Judges and their conditions of appointment will continue to apply. Savings provisions will ensure that the change of title will not affect any proceedings before the Supreme Court.

Schedules 4 and 13 also amend the Supreme Court Act 1970 and the Criminal Appeal Act 1912 to ensure that the legislation reflects that all Supreme Court officers are appointed under the Public Sector Employment and Management Act 2002 and to clarify the powers of Registrars and officers of the court. Schedules 5 and 6 amend the Director of Public Prosecutions Act 1986 and the Judges Pension Act 1953. Under the Judges Pensions Act 1953 a widow or widower of a judge is generally entitled to a reversionary pension to the value of 30 per cent of the judges' salary at the time of the judge's retirement or death, if in office at the time. A widow or widower is entitled to this pension from the date of the death of the judge or retired judge until the widow or widower's own death.

Section 16 of the Judges Pensions Act 1953 gives a de facto partner of a deceased judge a degree of legal recognition where the judge is also survived by a widow or widower, and the de facto partner has foreshadowed that he or she may institute proceedings under the Family Provision Act 1982 in relation to the deceased judge's estate. However, section 16 does not apply where a judge is survived only by a de facto partner. To enable the de facto partner of a deceased judge or a deceased retired judge to receive a reversionary pension, the Judges Pensions Act 1953 is to be amended. Such amendments will bring the Judges Pension Scheme in New South Wales into line with all other New South Wales State superannuation and pension schemes.

The Director of Public Prosecutions and his or her spouse are also entitled to a pension under the Judges Pensions Act 1953 and, accordingly, consequential amendments should be made to the Director of Public Prosecutions Act 1986. Appropriate amendments to the Judges Pensions Act 1953 and the Director of Public Prosecutions Act 1986 are recommended accordingly. Schedule 7 contains amendments to the Jury Act 1977 relating to the form and manner in which a jury takes an oath or affirmation to give a true verdict according to the evidence. Section 45 is to be amended to remove the necessity for an oath to be taken by a jurist while holding a religious text. This is consistent with provisions relating to witnesses under the Evidence Act 1995.

Section 72A of the Jury Act 1977 is amended by including a standard form of wording for the oath or affirmation to be administered to a jurist. The standard form of oath or affirmation is intended to give guidance to judicial officers on the appropriate manner of administering an oath or affirmation. The standard form of oath or affirmation does not replace other variations of oaths and affirmations that may currently be used. A justice of the peace is required to take an oath of office when they are newly appointed. Justices of the peace are now required to periodically renew their appointment. Schedule 8 amends the Justice of the Peace Act 2002 to ensure that a justice of the peace is not required to take the oath of office again at the time of re-appointment if the former appointment has not lapsed.

The Chief Judge of the Land and Environment Court, the Hon. Justice McClellan, has asked for a number of minor amendments to the Land and Environment Court Act 1979 to further the package of non-legislative reforms recently undertaken by the court. These are included in schedule 8 to the bill. The amendments requested by the Chief Judge, which extend the power of the court to direct the mediation of proceedings, to appoint a person to execute an instrument, and to order costs against a defaulting solicitor, all relate to matters where the Supreme Court has existing statutory powers, which have not been extended to the Land and Environment Court. Appropriate amendments to the Land and Environment Court Act 1979 are recommended accordingly.

The Chief Judge of the District Court has requested that section 338A of the Legal Profession Act 2004 be amended to increase the maximum costs for certain claims in the District Court. The proposed amendment will allow a respondent to a matter reheard after arbitration, or a respondent to an appeal, to claim an additional amount of costs of up to 15 per cent of the amount recovered, or \$7,500, whichever is the greater. The District Court has experienced a significant decrease in the number of cases that may be referred to alternative dispute resolution through arbitration. The proposed amendment is intended to ease the restrictions in the limitation on maximum costs to encourage the continued use of alternative dispute resolution options. It will ensure that a respondent may recover additional costs that may be incurred through no fault of the respondent at a rehearing after arbitration or on an appeal.

The Chief Magistrate of the Local Court has requested that section 19A of the Local Courts Act 1982 be repealed to allow magistrates to robe in court. The Chief Magistrate is of the view that the wearing of a judicial robe will enhance the security of the magistracy and the dignity of the court. To moderate against an undue level of formality in the court, magistrates would be confined to wearing a plain black robe, and the choice to robe would not extend to members of the legal profession. It is proposed that the wearing of robes by magistrates would be a matter of individual choice with the cost to be borne by the judicial officer. An appropriate amendment to the Local Courts Act 1982 is recommended accordingly.

Under the Oaths Act 1900 the oaths of office for a justice of the peace may be administered by a range of judicial officers or by a specially authorised justice of the peace. To reduce the burden currently being placed on magistrates, schedule 11 amends the Oaths Act 1900 to allow a registrar of the Local Court to administer the oaths of office for a justice of the peace. The Public Defenders Act 1995 provides for the appointment of senior and deputy senior public defenders for fixed terms. Schedule 12 will amend the Public Defenders Act 1995 to provide that a senior or deputy senior public defender, who immediately before his or her appointment was a Crown prosecutor, shall also be appointed as a public defender and, subject to the Public Defenders Act 1995, shall remain a public defender after ceasing to hold that office.

The Bar Association has noted that Crown prosecutors have security of tenure but must relinquish that security if appointed as a senior or a deputy senior public defender. These amendments ensure that Crown prosecutors are not discouraged from seeking appointment as a senior and deputy senior public defender. These amendments improve the efficiency of the courts, and provide an improved and more accessible service for legal practitioners and the public. With those recommended changes, I commend the bill to the House.