



NSW Legislative Council Hansard

Courts Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 8 June 2005.

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.03 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Courts Legislation Amendment Bill provides for miscellaneous amendments to legislation affecting the operation of the courts of New South Wales. **Administrative Decisions Tribunal** 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. Only a member who is a retired judge of the Supreme Court or Federal Court or who has equivalent experience or qualifications is qualified to deal with these proceedings. The Supreme Court recently considered this provision and restricted the capacity of a number of members to continue to deal with cases in this division. 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 who has substantial experience or qualifications in commercial law. The amendment is designed to ensure that those members who previously determined these cases can continue to do so. The amendments will also validate previous decisions made by these members. **Anti-Discrimination Act 1977** Schedule 2 amends the Anti-Discrimination Act 1977. Section 88B is inserted to make it clear that where a complaint is lodged in more than one jurisdiction, then the Anti-Discrimination Tribunal is to have regard to any decision made in other proceedings relating to the complaint. **Supreme Court Masters** Schedules 3, 13 and 14 relate to a 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. 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 adversely impact on current 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 amend the Supreme Court Act 1970 and the Criminal Appeal Act 1912 to reflect the fact that Supreme Court officers are appointed under the Public Sector Employment and Management Act 2002. The amendment also clarifies the powers of Registrars and officers of the Court.

The amendments will also allow the Chief Justice to authorise Registrars of the Local Court and other officers to exercise functions of Deputy Registrars of the Supreme Court. The purpose of this amendment is to ensure that Registrars of the Local Court in regional and border areas can exercise the powers of a Deputy Registrar in relation to matters, for example, the making of applications by interstate legal practitioners to become admitted to practice in this State under the Mutual Recognition legislation.

Judges Pensions 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 thirty 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.

The Judges' Pensions Act will be amended to enable the de facto partner of a deceased judge or a deceased retired judge to receive a reversionary pension. A de facto partner is defined as a person in a de facto relationship within the meaning of the Property (Relationships) Act 1984. These amendments will bring the NSW Judges' Pension Scheme into line with all other NSW 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. Consequential amendments are being made to the Director of Public Prosecutions Act 1986 to reflect the changes being made in relation to judges.

Jury Act 1977 Schedule 7 contains amendments to the Jury Act 1977 relating to the form and manner in which a jury takes an oath or affirmation. Section 45 will be amended to remove the necessity for a juror to take an oath while holding a religious text. This is consistent with provisions relating to witnesses taking oaths under the Evidence Act 1995. Section 72A of the Jury Act 1977 is to be amended to include a standard form of wording for the oath or affirmation to be administered to a juror. 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.

Justice of the Peace Act 2002 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.

Land and Environment Court Act 1979

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 of the bill.

The amendments will 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. The amendments will replicate the Supreme Court's existing statutory powers.

Legal Profession Act 2004

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 payable for certain personal injury claims in the District Court. The amendment will allow a respondent to proceedings that are reheard after arbitration or a respondent to an appeal to claim an additional amount of costs of up to 15% of the amount recovered, or \$7,500, whichever is the greater. The District Court has experienced a significant decrease in the number of cases being referred to arbitration. The amendment is intended to ease the legislative restriction on the maximum costs payable to encourage the continued use of alternative dispute resolution options. It will also 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.

Local Courts Act 1982

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.

Oaths Act 1900

Under the Oaths Act 1900, the oath 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 will amend the Oaths Act 1900 to allow a Registrar of the Local Court to administer the oaths of office for a justice of the peace.

Public Defenders Act 1995

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, will also be appointed as a Public Defender and, subject to the Public Defenders Act 1995, will 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. I commend the bill to the House.