Second Reading

The Hon. MICHAEL GALLACHER (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [3.35 p.m.]: I move:

That this bill be now read a second time.

Parliamentary Secretary the Hon. David Clarke will make a comprehensive speech on the Courts and Other Legislation Further Amendment Bill 2011. The objects of the bill are to amend the Civil Procedure Act 2005 to defer the application of part 2A of that Act with regard to civil proceedings; and to amend the Guardianship Act 1987 to allow for the delegation of the Attorney General's power to approve the place in which a person may be placed in the care of the director general under that Act. Further, the bill will amend the Land and Environment Court Act 1979 to confirm that certain appeals brought by Aboriginal land councils are within class 3 of the Land and Environment Court's jurisdiction and will, finally, limit the types of conviction in respect of which a victim's compensation levy is payable under the Victims Support and Rehabilitation Act 1996. The Government has been considering these matters for some time. They are quite sensible changes to New South Wales legislation. I particularly want to focus on the amendment to the Victims Support and Rehabilitation Act 1996. That support mechanism is an important part of our system of looking after victims of crime. Item [1] of schedule 4 will insert new subsection 78 (3), which states:

> … ***conviction*** does not include an order made under section 10 (1) (a) of the Crimes (Sentencing Procedure) Act 1999 in relation to an offence that is not punishable by imprisonment (whether or not it is also punishable by some other penalty).

Item [2] of that schedule contains savings, transitional and other provisions. The purpose of the bill is to make miscellaneous amendments to legislation affecting the operation of the courts of New South Wales and other legislation administered by the Attorney General, and Minister for Justice. The bill is part of the Government's regular legislative review and monitoring program and will amend a number of Acts to improve the efficiency and operation of our courts as well as the operation of agencies within the Department of Attorney General and Justice.

I will now turn to each of these amendments in turn. In doing so I will take a bit of the load off the Parliamentary Secretary, and I thank members for allowing me to make some opening comments. The bill contains an amendment to the Civil Procedure Act 2005 to postpone by up to 18 months the commencement of part 2A of that Act. Part 2A contains measures to encourage the early resolution of civil disputes, including a requirement that parties take reasonable steps to resolve a dispute by agreement or to narrow the issues in dispute before commencing court action. These requirements were enacted in late 2010. Since the 2011 State election a number of stakeholders have expressed mixed thoughts about part 2A. Whilst the policy intention underpinning the provisions has received generous support, concerns have been raised about its practical implementation.

In particular, senior members of the judiciary, the legal profession and industry groups have expressed concerns that part 2A as currently drafted could lead to increased costs and delays in resolving disputes for litigants and the courts. A particular concern raised by stakeholders was that the reforms could give rise to satellite litigation about what constitutes reasonable steps. Part 2A contains examples of reasonable steps that could be taken before commencing

court action but it does not prescribe specific steps that must be taken, nor does it make any particular step mandatory, such as mediation. Another concern is that the reforms will add to the cost of litigation both in the pre-commencement phase as a result of the requirement to take pre-litigation action, and due to satellite litigation after proceedings have commenced.

Similar issues prompted the Victorian Parliament in March this year to repeal equivalent provisions enacted in that State. Whilst the Government has carefully considered and appreciates the concerns raised, it is not proposed that part 2A be repealed at this time. The Government remains supportive of the overarching policy objectives in part 2A—that is, there is merit in seeking to find new ways to reduce the demand on court resources by encouraging parties to resolve their dispute or to clarify the real issues in dispute before commencing litigation. The court should generally be reserved for those cases that are most deserving of judicial resources, and justice should be delivered in these cases as efficiently as possible. However, it would be perverse if the reforms contained in part 2A actually led to a lengthening of disputes or an increase in costs, as predicted by some stakeholders. Accordingly, the Government believes it is appropriate to defer the application of part 2A until there is an opportunity to consider how similar pre-litigation measures work in practice elsewhere in Australia.

In March 2011 the Commonwealth Parliament passed similar provisions to part 2A. Those provisions commenced on 1 August 2011. Therefore, it is proposed that the application of part 2A be postponed to allow the equivalent Commonwealth provisions to be evaluated. This is expected to take approximately 12 to 18 months. Evaluation of the equivalent Commonwealth provisions will provide an evidence base to inform future decisions about part 2A. In particular, the evaluation period will provide an opportunity to test whether concerns raised by stakeholders will be realised in practice. Postponement is supported by the Chief Justice, the Chief Judge of the District Court and the Chief Magistrate. It is supported also by the Law Society of New South Wales and the New South Wales Bar Association. To ensure that part 2A does not rest on the statute books indefinitely, the bill provides that part 2A will apply to civil proceedings commenced 18 months after the postponement provisions take effect or such sooner date as set by proclamation.

The proposed amendment to the Guardianship Act 1987 will enable the Attorney General as Minister responsible for the Act to delegate the power to approve premises under section 13 of the Act as premises where a person may be placed in the care of the Director General of the Department of Family and Community Services. Approved premises are used to place people who have been removed from other premises under order of the Guardianship Tribunal under section 11 of the Act, or removed from premises by police under section 12 of the Act. Following the transfer of responsibility for the Guardianship Act 1987 from the Minister for Disability Services to the Attorney General in June 2011 an issue was identified concerning the responsible Minister's power of delegation. Previously, the Minister for Disability Services as Minister responsible for the Guardianship Act 1987 had the power of approval under section 13 of the Act and was able to delegate this power under the provisions of section 5 of the Community Welfare Act 1987.

However, no such power of delegation has passed to the Attorney General, notwithstanding that he is now the Minister responsible for the Guardianship Act 1987, and the previous delegation to officers of Ageing, Disability and Home Care is now defunct. The Attorney General's urgent approval of premises under section 13 of the Guardianship Act 1987 has recently been sought prior to Guardianship Tribunal hearings. Previously, such decisions about the approval of premises had been delegated to officers of Ageing, Disability and Home Care who are in a position to properly evaluate the suitability of such premises. This

amendment will ensure that the Attorney General as Minister responsible for the Guardianship Act 1987 will be able to delegate the power of approval, as was previously the case for the Minister for Disability Services.

Schedule 3 to the bill contains an amendment to the Land and Environment Court Act 1979 that will clarify that appeals by an Aboriginal land council against a refusal of a land claim will fall within class 3 of the Land and Environment Court's jurisdiction. Section 36 (7) of the Aboriginal Land Rights Act 1983 provides the Land and Environment Court with jurisdiction to hear and determine any appeal made to it by an Aboriginal land council against a refusal of a land claim that council has made. The court's practice has been to allocate such appeals to class 3 of its jurisdiction, which is concerned with land tenure, valuation, rating and compensation matters. However, section 19 of the Land and Environment Court Act, which lists those matters falling within class 3 of the court's jurisdiction, does not expressly refer to these appeals.

The Chief Judge of the Land and Environment Court has written expressing concern about this issue, particularly because on one view of the legislation an appeal under section 36 (7) of the Aboriginal Land Rights Act 1983 could fall within class 4 of the court's jurisdiction. The implications would be significant if, contrary to usual practice, these appeals were treated as class 4 matters, which relate to environmental planning and protections laws. Importantly, unlike class 4 matters, class 3 matters are hearings de novo, meaning that appeals are heard by way of re-hearing and fresh evidence may be considered. The Land and Environment Court Act 1979 also provides that class 3 matters are to be conducted with minimal formality and technicality, and enables commissioners with specialist knowledge of matters concerning land rights for Aborigines to assist the judge in hearing these matters. This manner of conducting proceedings would not be available if appeals under section 36 (7) of the Aboriginal Land Rights Act 1983 were treated as falling within class 4 of the court's jurisdiction. The bill will include such appeals in the list of class 3 matters referred to in section 19 of the Land and Environment Court Act 1979 in order to dispel any doubt that this is the correct approach.

The proposed amendments to the Victims Support and Rehabilitation Act 1996 concern the circumstances in which the Victims Compensation Court levy is imposed. Under the Act the levy applies to all offences where a conviction is recorded, except those exempted by regulation. The levy is $67 for summary offences and $153 for indictable offences. The levies are directed to a fund from which all payments of statutory compensation to victims of crime, approved counselling services and other victims services related costs are paid. Under the proposed amendment the victims levy will not apply where a charge is dismissed under an order made pursuant to section 10 (1) (a) of the Crimes (Sentencing Procedure) Act 1999, except where an offence is punishable by imprisonment. Section 10 (1) (a) orders are made where a court finds a person guilty of an offence but because of extenuating circumstances, such as a good criminal or driving record, directs that the charge be dismissed.

Several people have argued that the current situation is unduly harsh where a person still has to pay the levy after a summary offence charge has been dismissed as the offence in most cases is minor and the person otherwise has a history of good behaviour. The Government also wishes to ensure that vulnerable people such as the homeless and mentally ill do not face undue financial pressure because they have to pay the levy even when a charge has been dismissed, and that such people are not discouraged from attending court in relation to offences alleged by penalty notice. The amendments contained in the bill have been the subject of thorough consultation with stakeholders. I thank members for allowing me to make some opening comments on this legislation. I am sure the Hon. David Clarke will give a far

more detailed explanation if he sees the need; if not, he probably will allow my presentation on this legislation to stand. I thank members for giving me the opportunity to say a few words. I commend the bill to the House.