



## Courts and Other Miscellaneous Legislation Amendment Bill 2013 (Proof)

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#### Second Reading

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [8.53 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Courts and Other Miscellaneous Legislation Amendment Bill 2013. 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 outline each of the amendments in turn. Schedule 1.1 to the bill amends various provisions in the Anti-Discrimination Act 1977. The amendments do not change the existing statutory requirements for either direct or indirect discrimination. However, the amendments clarify that for a complaint of indirect discrimination there is no need to prove that a protected ground of discrimination under the Act is a reason for the discriminatory treatment, requirement or condition. These amendments reflect the New South Wales Court of Appeal decision in *Amery & Ors v State of New South Wales (Director-General New South Wales Department of Education and Training)* [2004]. In *Amery* the New South Wales Court of Appeal considered the proper construction of section 24 (1) of the Anti-Discrimination Act, which defines discrimination on the grounds of sex. Section 24 (1) (a) relates to what is typically described as "direct discrimination" and section 24 (1) (b) relates to "indirect discrimination". The question that arose in *Amery* was what meaning, if any, should be ascribed to the words "on the ground of the aggrieved person's sex" in relation to the requirements of indirect discrimination under section 24 (1) (b).

The Court of Appeal considered the concept of indirect discrimination and its treatment in earlier cases. Indirect discrimination includes acts, decisions or requirements made by reference to criteria which are apparently non-discriminatory but which have a disparate impact on men and women. The Court of Appeal concluded that a requirement under section 24 (1) (b) that the discrimination be "on the ground of the aggrieved person's sex" is not consistent with the concept of indirect discrimination. The Court of Appeal concluded that the inclusion of these words in relation to section 24 (1) (b) was a "drafting error", was "mere surplusage" and should be ignored. The Court of Appeal's conclusion was reinforced by the drafting history of section 24.

The amendments in this bill reflect the decision in *Amery* regarding the correct interpretation of section 24 (1) of the Anti-Discrimination Act and will ensure that the law is more accurately reflected on the face of the Anti-Discrimination Act. Corresponding amendments are also made to other sections of the Anti-Discrimination Act that define discrimination on the other protected grounds, including: race, section 7; transgender, section 38B; marital or domestic status, section 39; disability, section 49B; responsibilities as a carer, section 49T; homosexuality, section 49ZG; and age, section 49ZYA.

Schedule 1.2 to the bill amends section 122 of the Civil Procedure Act 2005 to clarify how the maximum total payment under a wage or salary garnishee order is calculated. It continues to set the maximum payment that can be debited from a person's income under concurrent garnishee orders. Section 122 of the Civil Procedure Act 2005 still refers to repealed section 37 (1) (a) (i) of the Workers Compensation Act 1987. This was an oversight in the 2012 amendments to the Workers Compensation Act 1987 legislation. The amendment resolves this anomaly by confirming the status quo position before the 2012 amendments. The amount of \$447.70 referred to in subsection (1) will be an adjustable amount for the purposes of division 6 of part 3 of the Workers Compensation Act 1987 and will continue to be adjusted in April and October annually.

Schedule 1.3 to the bill amends section 13 of the Dust Diseases Tribunal Act 1989 to enable the president of the tribunal to delegate to another member of the tribunal functions relating to managing the proceedings list, namely, fixing the time, place and before whom proceedings are to be held.

**Mr David Shoebridge:** Point of order: It is hard to hear the contribution being made by the Parliamentary Secretary. There is an enormous amount of chatter in the Chamber.

**DEPUTY-PRESIDENT (The Hon. Sarah Mitchell):** Order! I uphold the point of order. Members who wish to engage in conversation should do so outside the Chamber.

**The Hon. DAVID CLARKE:** The chief judge has held a dual commission as the president of the tribunal since November 2012. He oversees the administration of the tribunal and ensures that its practices and procedures remain efficient and effective. I seek leave to have the remainder of the second reading speech incorporated into *Hansard*.

#### Leave granted.

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The chief judge requested the amendment so that responsibility for managing listings can be delegated to increase efficiency. It is common for heads of jurisdiction to delegate responsibility for list management in this manner.

The delegation will have no impact on the rank or salary of the judge to whom the delegation is made and the chief judge, as president of the tribunal, will retain overall responsibility for the tribunal's performance as well as all other responsibilities under the *Dust Diseases Tribunal Act*.

#### ***Evidence (Audio and Audio Visual Links) Act 1998***

Schedule 1.4 of the bill will amend section 5BA of the *Evidence (Audio and Audio Visual Links) Act 1998* to allow accused detainees to appear in first appearance bail proceedings via an audio visual link during the Local Court Annual Conference and the Christmas/New Year period each year.

An accused detainee is generally required to appear physically before the Court in first appearance bail proceedings. However, section 5BA(2) of the *Evidence (Audio and Audio Visual Links) Act* provides an exception to this requirement for bail proceedings that occur during a weekend or on a public holiday, or relate to an accused detainee who is being held in custody at a place prescribed by the regulations. On these occasions, the accused detainee does not need to physically attend court, and instead may appear by audio visual link.

The bill will allow for this same exception to apply to bail proceedings that occur during the Christmas holiday period for the Local Court, which is about two weeks each year, and during the three-day Local Court Annual Conference, which is an essential professional development activity for the court. At these times, the normal rostered sittings of the Local Court and the Children's Court cease, and acting magistrates are rostered at the Parramatta Local Court and Parramatta Children's Court to determine bail applications and other urgent matters.

Audio visual links have been used for bail proceedings conducted on weekends and on public holidays for some time. As a result of amendments to the *Evidence (Audio and Audio Visual Links) Regulation 2010*, the Local Court and Children's Court were able to trial the use of audio visual links for bail proceedings conducted over the course of the two most recent Christmas holiday periods, as well as the 2012 Local Court Annual Conference.

The proposed amendment will allow for these arrangements to be made permanent. It will facilitate greater efficiencies, particularly at times of the year when numbers of available staff are low and resources are limited.

Relevant stakeholders, including the Local Court, Children's Court, Juvenile Justice, Corrective Services NSW, the NSW Police Force, Legal Aid NSW and the Aboriginal Legal Service were consulted in developing the proposed amendment.

#### ***Fines Act 1996***

Schedule 1.5 of the bill inserts section 11 (8) into the *Fines Act 1996* to allow specified registrars of the District, Local and Children's Courts to authorise employees of the Department of Attorney General and Justice to consider applications for further time to pay a court-imposed fine.

A court fine must be paid within 28 days of the court making a fine order. A person can apply at a court registry to extend the time or to pay by instalments. A registrar's decision is final and cannot be appealed. A registrar can authorise any court officer to deal with a time to pay application, which is known as a TIP application. Court registrars and authorised court officers are responsible for considering TIP applications under sections 10 and 11 of the *Fines Act 1996*.

To improve the efficiency of administering the process, Courts and Tribunal Services set up a call centre in April 2011. Most call centre staff are not technically an officer of a court, nor a registrar. TIP applications are one of the decisions referred to the call centre to be determined on the phone. To clarify the legality of this process, the amendment permits the specified registrars to delegate the power to determine TIP applications to call centre staff who are employees of the court or Department of Attorney General and Justice.

The call centre staff are equivalently graded to court officers who are authorised to decide TIPs in physical court registries. The amendment will not affect the State Debt Recovery Office, which administers the collection, administration and enforcement of court fines after they are referred for non-payment during the court process. Call centre staff also processes the State Debt Recovery Office's TIP application process.

#### ***Government Information (Public Access) Act 2009***

Schedule 1.6 of the bill amends schedule 2 of the *Government Information (Public Access) Act 2009* to exclude information relating to the functions of the DNA Review Panel, other than its functions relating to reporting and making recommendations to the Minister, from being able to be accessed under that Act.

The DNA Review Panel's primary function is to review DNA evidence in cases lodged by offenders convicted before 19 September 2006. The panel determines if DNA material from a crime scene can be tested to assist in an offender's claim of innocence and can refer cases to the Court of Criminal Appeal for review of conviction following receipt of DNA test results.

The reviews the panel undertakes involve a range of sensitive biological and personal information of offenders and victims of crime. Currently, a person requesting such information will not generally be successful because the information would be subject to an overriding public interest against disclosure.

The inclusion of the Review Panel's information in schedule 2 of the *Government Information (Public Access) Act* will make it clear to potential applicants which information held by the panel cannot be the subject of an access application. This will reduce the potential for frustration and disappointment when an application for information that is apparently accessible is refused because it is subject to an overriding public interest against disclosure.

### **Local Court Act 2007**

Schedule 1.7 of the bill amends section 25 of the *Local Court Act 2007* provides for the appointment of a legally qualified and admitted police prosecutor as a member of the Local Court Rule Committee when the committee is exercising its functions in respect of matters relating to the court's criminal jurisdiction.

The rule committee established under section 25 of the *Local Court Act 2007* is responsible for making court rules for the Local Court. The Minister for Police and Emergency Services proposed that a police representative be appointed to the committee as the NSW Police Force is a party to about 92 per cent of all criminal matters before the Local Court.

The rule committee currently consists of up to 14 members, most of whom are magistrates or lawyers. It includes a representative of Legal Aid NSW and the Director of Public Prosecutions when it considers criminal rule matters.

The amendment to section 25 will provide a permanent position on the rule committee for a police prosecutor who is legally qualified and admitted and owes broader professional duties to the court. Police prosecutors are expected to follow guidelines which are analogous to the Director of Public Prosecutions guidelines. The position will enable the police to proactively raise issues as well as bring an operational perspective to committee deliberations.

In recent years, it has become increasingly apparent that the actions of police and in particular police prosecutors have a significant impact on the case management and resources of the Local Court. It is in the public interest to include a police representative on the committee when it considers criminal procedure rules.

### **Young Offenders Act 1997**

Schedule 1.8 of the bill amends section 66 of the *Young Offenders Act 1997* to authorise the information exchanges necessary to commence the new Youth on Track scheme.

In February 2013 I announced the innovative new Youth on Track scheme which follows an early intervention model designed to prevent young people at risk of committing crimes from becoming entrenched in criminal behaviour.

Police and teachers who have regular contact with young people are often well placed to identify those at risk of becoming involved in crime. This scheme will use their expertise to identify youth at risk before it is too late.

The program will offer targeted services to assist young people deal with issues like substance abuse, educational problems, mental illness, and family dysfunction. Participation in the program will be voluntary.

The proposed amendments will allow New South Wales police to provide the Department of Attorney General and Justice with select information about young offenders they have contact with which police consider may benefit from the program. The Department of Attorney General and Justice will assess the suitability of those offenders for Youth on Track and refer those likely to benefit to non-government organisations engaged to provide targeted services to reduce the young offender's risk of reoffending.

Specifically, the bill authorises New South Wales police to provide information to officers of the Department of Attorney General and Justice about warnings, cautions and conferences given to young people under the Young Offenders Act. This information includes criminal history, current offence details and the nature of previous contact with New South Wales police.

The bill also authorises officers in the Department of Attorney General and Justice to enter arrangements permitting for the provision of information about young people to non-government organisations engaged to provide services as part of Youth on Track. This information includes relevant information about criminal history to assist in identifying those services that will help the young person to address the underlying causes of their offending behaviour. The arrangements will include appropriate safeguards for the use and disclosure of information obtained by non-government organisations.

It is in the interests of the public and the young people in question for these amendments to be made, authorising the sharing of information to reduce offending behaviour.

I commend the bill to the House.