COURTS AND CRIMES LEGISLATION AMENDMENT BILL 2008
CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 2008
CHILDREN (DETENTION CENTRES) AMENDMENT BILL 2008

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Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [3.50 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Children (Detention Centres) Bill 2008. We have a long history of maintaining a safe and secure juvenile justice system while making juvenile offenders the focus of intensive rehabilitation efforts. The bill seeks to amend the Children's (Detention Centres) Act 1987 to streamline arrangements for the transfer of adult detainees out of the juvenile justice system in certain circumstances, as well as to extend and codify the existing powers of the director general to maintain the good order and secure management of detainees. The recommended changes will modify a transfer process that has been in place for a number of years and is in no way a departure from existing government policy.

The proposed changes will allow for greater certainty in the transfer of detainees into adult facilities and the granting of additional powers that will allow the director general to maintain good order in juvenile facilities across New South Wales with particular regard to segregation, and the separation of detainees in particular circumstances where the security of staff, visitors or other detainees might otherwise be placed at risk. The changes come against the backdrop of concerted efforts by the Iemma Government to refocus rehabilitation efforts on juvenile offenders. The Children (Detention Centres) Act 1987 will amend the provisions of that Act with respect to the transfer of detainees from detention centres to correctional centres and to clarify its provisions with respect to the separate detention of different classes of detainees.

I refer now to the details of the bill. The bill inserts provisions into section 16 of the Act to empower the Director General of the Department of Juvenile Justice to direct that different detainees or groups of detainees be separately accommodated, and ensure that their separate accommodation is not prevented by any section of the Anti-Discrimination Act 1977. This bill amends section 16 of the Act to provide the director general with the power to enable the segregation of a particular detainee, or group of detainees, from another detainee or group of detainees for the reasons of good order, discipline and/or security of the detention centre, and that the period of segregation be able to continue until the risk to good order, discipline and/or security has dissipated, in the opinion of the director general.

Currently, the department is only able to hold a detainee separate from the general centre population under its section 16 segregation powers, or if a form of victimisation or threat has already occurred. The bill will seek to extend this legislation to allow centre staff to make an informed assessment of the detainee and separate the individual if they believe that it is reasonable that they may come to harm. The new provisions will allow the department to protect the safety of such individuals prior to such a threat existing. Through new provisions in section 32A, the bill provides for a regulation-making power with respect to the review of directions given by the director general relating to the power to separate detainees.

The regulations will be amended so that individuals held separately for a period of 24 hours are to be reported to the New South Wales Ombudsman, as per the current provisions in the regulation in relation to the segregation provisions of section 19 of the same Act. The regulation will state that if an individual detainee is separated under section 16 for more than 24 hours the centre manager must ensure that the Ombudsman is notified. The bill inserts provisions into section 19 of the Act to clarify the circumstances under which the director general may order that detainees be secured in their rooms in the event of a significant risk to the safety of staff, visitors or other detainees. The bill provides that the director general be able to order that detainees be locked in their rooms to prevent or contain a riot, serious disturbance or other dangerous situation occurring in a detention centre, and that the general containment can continue until the safety of staff and detainees can be assured.

Presently, the director general's power to effect the general containment of a centre is not clearly provided for in section 14 of the Act. It is proposed that these provisions will mirror the section 19 provisions regarding segregation. This will enable the process to be managed efficiently to ensure the health and safety of staff and detainees. In relation to the transfer of detainees, this bill clarifies and streamlines a number of existing arrangements. The amendment to section 28 (1A) is one such amendment. The bill amends section 28 (1A) to specify that if a young offender is sentenced after a section 28 order has been effected a further section 28 order may be made without the young offender returning to a juvenile detention centre, and that the new sentence be served in an adult correctional centre. The new provisions

clarify that a transfer order under section 28 can be made regardless of whether or where the detainee is currently in custody.

This bill amends section 28 (2A) of the Act to provide a wider set of circumstances for making a transfer order with respect to a detainee who is between 18 and 21 years of age. One of those grounds is that the detainee has been at the detention centre for at least 6 months and the director general is satisfied that it would be more appropriate for the detainee to be at a correctional centre. The other ground is that the detainee is, or has previously been, at a correctional centre, other than a juvenile correctional centre, for more than four weeks. Young adult detainees 18 years and over currently make up about one-quarter of detainees in the juvenile justice system. The legislation does not currently provide for the assessment of a detainee over the age of 17 as to where they would be best detained.

The changes proposed in this bill recognise the differing maturity levels and developmental stages of young people, especially where issues of disability and mental health are involved. While taking into account the recommendations of the court in assessing a young person 18 years or over, the director general would be advised by expert staff of the Department of Juvenile Justice with direct and ongoing experience of young offenders' behaviour and demeanour while in detention. Factors that are considered in making the decision to transfer a young person to adult custody are: the offence for which they have been sentenced; the duration of that sentence; their maturity level, psychological assessment, intellectual functioning, mental health, and educational vocational needs; their behaviour and demeanour whilst in custody; the wishes of the young person; and any other factor deemed pertinent.

This bill also provides that a person over 18 years can be transferred to an adult correctional centre where the detainee is, or has previously been, detained as an inmate in an adult correctional centre for a period of, or periods totalling, more than four weeks. This bill proposes amendments to section 9A of the Act to provide that persons who are 21 or over are not to be detained in a detention centre if they are subject to an arrest warrant of any kind, and that persons who are between 18 and 21 are not to be detained in a detention centre if they are subject to an arrest warrant issued in relation to an alleged breach of a good behaviour bond, probation or community service order, or an alleged escape from custody.

Currently, young offenders are admitted to detention centres on outstanding juvenile matters pending transfer to an adult correctional centre. This bill aims to clarify that older offenders who have breached bond, community service orders, suspended sentence parole or who have escaped from a detention centre do not need to be admitted to a detention centre in order to be transferred to a correctional centre. Also, those over 18 serving juvenile community sentences, if they commit fresh offences, will come before an adult court where they will be sentenced under the adult Crimes (Administration of Sentence) Act 1999. The fact that they are guilty of fresh adult matters automatically will mean that they have breached their juvenile orders and these breaches, as with breaches of non-compliance, would be dealt with as if they are still juveniles.

The provisions proposed in section 9A (2) (e) will mean that this category of young offender will be transferred to an adult correctional facility. This means that an offender who has previously served a period of custody in an adult correctional facility cannot be returned directly to a juvenile detention centre to serve a further period of custody. This bill also amends section 7 (1) of the Act so that each detention centre need be inspected only at least once every 12 months, rather than every 3 months. Current inspection guidelines require a full and comprehensive inspection of each centre every three months. The department recently drafted a quality assurance policy that, should this amendment be passed, will allow a nominated inspector to undertake a comprehensive inspection of each centre on an annual basis, with follow-up inspections on a three-monthly basis.

The proposed policy seeks to ensure the accountability and continuous improvement of programs and services, and implements a framework which will grade inspection indicators. These indicators will identify the necessity of further inspection throughout the year. If the inspector is satisfied that the centre is consistently meeting approved benchmarks for performance on an indicator that particular item will not be assessed for a period of 12 months. But, where improvements, however slight, are required, the centre's continuous improvement team will be responsible for implementing measures to address the identified issue. These indicators will be assessed on a three-monthly basis.

The bill amends section 21 (1) (b) of the Act to enable detainees who are being punished for misbehaviour to be restricted from participation in sport or leisure activities for a period greater than four days, as is currently the case. The proposals provide that any such restriction cannot be for more than seven days at a time except with the prior approval of the director general. The opportunity to engage in sport and leisure activities provides a strong motivation for detainees to maintain good order within a centre. Having more flexibility in determining the length of restrictions provides centre staff with a useful tool to assist in motivating detainees' good behaviour. Experience indicates that the restriction of four days currently imposed does not provide enough flexibility for centre managers to negotiate appropriate behaviours using the incentive of recreational rewards.

Importantly, the bill does not affect the provisions of section 10 of the Children (Detention Centres) Act 1987 whereby any person deemed vulnerable in an adult correctional centre can be transferred to a juvenile facility with the consent of the commissioner and the director general. The new provisions under section 33 (1) (g) provide that an offender who is under 21 years of age will continue to be committed to the control of the Minister for Juvenile Justice, while an offender who is of or above that age will be committed to the control of the Minister for Justice, and therefore will be accommodated in a correctional centre rather than a children's detention centre. The principle of separation of juvenile and adult offenders has long been enshrined in legal doctrine at domestic and international levels. Article 37 (c) of the United Nations Convention on the Rights of the Child, which has been ratified by the Commonwealth, State and Territory governments, clearly states that:

every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.

This principle recognises that young people have a decreased responsibility for their offending behaviour compared with adults and are vulnerable within an adult system. The article seeks to prevent contamination by older offenders. It should also be noted that New South Wales has the oldest prescribed age limit in Australia when it comes to transfers to adult custody.

This is a sound bill and it is consistent with interstate jurisdictions and current Government policy. These provisions simply allow more flexibility for detainees who have been assessed as suitable for transfer to be moved to an adult facility with minimal administrative disruption. While I will discuss the amendments to provisions dealing with offenders aged over 18 entering juvenile detention later, it is proposed that such a transfer be made by order in writing by the director general, with the consent of the Commissioner of Corrective Services, for those detainees deemed suitable on a case-by-case basis. It is anticipated that an order made under this provision will apply only to those detainees over the age of 18 who demonstrate maturity and are assessed as suitable for adult custody.

There will always be detainees who, even though they are legal adults, are so mentally, emotionally or physically vulnerable to intimidation or criminal influence that the director general cannot be satisfied that a transfer will serve their rehabilitation prospects or, indeed, their immediate safety. The department will not shirk its responsibility of care to these detainees and, unlike more draconian proposals that have been suggested in the past, take a one-size-fits-all approach and move every adult detainee regardless of what is good for them or the greater society which they must eventually rejoin. I commend this bill to the House.

I now turn to the details of the Children (Criminal Proceedings) Amendment Bill 2008. The Children (Criminal Proceedings) Act 1987 governs the jurisdiction of the Children's Court in criminal matters, and sets out the main provisions relating to criminal proceedings against children. The Act is based on several guiding principles, including the principle that children have rights and freedoms before the law equal to those enjoyed by adults. However, with rights and freedoms come obligations. Therefore, the Act also provides that children who commit offences must bear responsibility for their actions. A working party has reviewed the operation of the Act.

The working party consisted of representatives from the Commission for Children and Young People, the Department of Aboriginal Affairs, the Department of Community Services, the Department of Juvenile Justice, the Law Society of New South Wales, Legal Aid, the Ministry for Police and New South Wales Police Force, the Director of Public Prosecutions, the Children's Court and the New South Wales Attorney General's Department. The working party made a number of recommendations about the way in which the Act might be improved. Those recommendations form the basis of the amendments in this bill. The bill also implements certain recommendations of the New South Wales Law Reform Commission's report No. 104, "Young Offenders", and the New South Wales Ombudsman's "Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act".

I now turn to the key provisions of the bill. The bill omits the current definition of "parent" in the Act and inserts new definitions of "parental responsibility" and "person responsible" to provide consistency with corresponding definitions in the Children and Young Persons (Care and Protection) Act 1998. Section 6 of the Act, which sets out the guiding principles relating to the exercise of criminal jurisdiction in cases involving children, will be amended to include the following new principles: that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties; that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions; and that consideration should be given to the effect of any crime on the victim. These amendments recognise that the effect of a juvenile offender's crime on his or her victim should be taken into account, and so should the child's capacity to make reparation.

Section 6 will also be amended so that all persons and bodies exercising functions under the Act, not just the courts, must apply the guiding principles. Section 12 of the Act will be amended so that if criminal proceedings are brought against a child the court hearing those proceedings must take such measures as are reasonably practicable to ensure that the child understands the proceedings. Based on advice from children's legal practitioners, section 13 of the Act will be amended to allow children over the age of 14 to select a responsible adult to be present when being interviewed by police. At present only young persons 16 years or older may choose an adult to fulfil the role of the responsible person. This amendment mirrors a similar provision in the Young Offenders Act 1997.

The next set of amendments deals with the circumstances in which the courts can direct that young persons under the age of 21 serve their sentence in a juvenile detention centre for an offence committed as a child. At present, a court can direct that a young person under the age of 21 serve all or any part of a custodial sentence imposed in relation to an indictable offence in a juvenile detention centre rather than a correctional centre. The courts may also order that a young person under the age of 21 who is found guilty of a serious children's indictable offence serve all or any part of a custodial sentence imposed in relation to an indictable offence in a juvenile detention centre if the court makes a finding of "special circumstances" under section 19 of the Act. The bill amends section 19 to provide that such a direction may not be made in respect of a person who is of or above the age of 18 years if that person is serving, or has previously served, a term of imprisonment in a correctional centre, unless it is satisfied that there are "special circumstances" to justify such a direction.

This bill also makes it clear that "special circumstances" can be found on only one or more of three grounds. These are: that the offender is vulnerable on account of illness or disability; that the only available educational or vocational training or therapeutic programs that are suitable to the person's needs are those available in detention centres; or that there would be an unacceptable risk of the person suffering physical or psychological harm, whether due to the nature of the person's offence, any assistance given by the person in the prosecution of other persons or otherwise. The bill clarifies that a finding of "special circumstances" may not be made simply because of the person's youth or simply because the non-parole period of the person's sentence will expire while the person is still eligible to serve the sentence as a juvenile offender. The bill also requires a sentencing court to record the detailed reasons for its decision to make a finding of "special circumstances".

These reforms are being introduced to clarify the Government's current policy in relation to the detention of young adults in the juvenile system. They are intended to create a more transparent and accountable scheme for the making of orders under section 19 of the Act. Young adults in the 18 to 21 age bracket have significantly different developmental needs from the needs of younger detainees in juvenile detention. The presence of these young adults can have a disruptive influence on the rehabilitation of younger detainees. It is only when there are compelling and exceptional circumstances affecting an individual young person that the courts should direct that the young person be admitted to a juvenile detention centre. This was the intention when the "special circumstances" requirement was inserted into section 19 of the Act.

However, the New South Wales Ombudsman, in his report entitled "Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act", found that during the review period the "overwhelming majority" of matters in which orders could be made under section 19 resulted in findings of "special circumstances". The Ombudsman found that, contrary to expectations, the requirement for the courts to make findings of "special circumstances" under the Act actually led to an increase in the number of young adults being held in juvenile detention rather than a reduction. Given the concerns raised by the Ombudsman in relation to the administration of the "special circumstances" regime, the bill will amend section 19 to give greater legislative guidance on what constitutes "special circumstances" under that section. However, section 19, as amended, will continue to play an important role in assisting those young adults who have specific needs or disadvantages in addition to their age to receive adequate support towards their rehabilitation.

I now turn to those provisions of the bill dealing with the penalties that the Children's Court may impose under the Act. The changes that this bill will make to section 33 will provide the Children's Court with more flexibility in formulating appropriate penalties for individual young people, and will also allow the court to ensure that a child is supervised properly after their matter has been dealt with by the court. The amendments will mean that the penalties that can be imposed in relation to children are more consistent with the sentencing options for adult offenders under sections 9, 10 and 12 of the Crimes (Sentencing Procedure) Act 1999. It is a guiding principle of the Act that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind. Under sections 9, 10 and 12 of the Crimes (Sentencing Procedure) Act 1999 a good behaviour bond may be imposed on a person when a charge is dismissed following a guilty finding. Currently the courts do not have the power to dismiss a charge but nevertheless require a child to enter into a good behaviour bond. This amendment provides greater scope for the courts and the Department of Juvenile Justice to monitor a child's behaviour after he or she has had a charge dismissed.

Section 33 will also be amended to allow the Children's Court to impose a fine on a child in addition to making an order releasing the child on probation—at present these are alternative penalties. In a further amendment to section 33 the courts will be able to release a young person on probation and impose a community service order as a condition of probation. This is another innovation, which ensures that, even after a child completes a period of community service work, he or she will continue to be supervised in the community. In a complementary amendment this bill amends the Children (Community Service Orders) Act 1987 to allow the courts to require a young person to participate in a vocational, educational or personal development program as a condition of a community service work order. This amendment implements the Government's election commitment. Finally, the Children's Court will be given the same power as other courts to impose a licence disqualification on a person whom it has found guilty of an offence, even if a conviction has not been recorded. This will bring the children's and adult jurisdictions into line with each other.

I now turn to those parts of the bill dealing with the important issue of compensation to victims. At present the Act allows the Children's Court to direct an offender to pay compensation to a victim of crime up to a maximum amount of $1,000. This bill increases the maximum to 10 penalty units, currently $1,100, in the case of an offender who is under the age of 16 years at the time the compensation is ordered, or 20 penalty units, currently $2,200, in any other case. This doubles the compensation that may be ordered against a person over the age of 16 years and acknowledges that many young people over this age have the financial capacity to pay higher amounts of compensation due to part-time work. In another important win for victims, the bill also amends the Act to make it clear that the provisions of the Crimes (Sentencing Procedure) Act 1999 relating to the use of victim impact statements apply to the Children's Court in the same way as they apply to similar offences when dealt with by the Local Court. This amendment puts beyond doubt the fact that victims can, and should, have a say in the sentencing of young offenders.

The final key amendment to the Act contained in this bill is an amendment to section 33 (1B) which will remove the requirement that the Children's Court set a non-parole period at the time of imposing a control order if the control order is suspended on condition the person enter into a good behaviour bond. Instead, the Children's Court will be required to set a non-parole period if the person later contravenes the good behaviour bond and the court decides to revoke the good behaviour bond. These changes are consistent with changes made to the Crimes (Sentencing Procedure) Act 1999 by the Crimes and Courts Legislation Amendment Act 2006. They ensure that the court is able to fix a non-parole period which is commensurate with the young person's behaviour whilst they were released on a bond. The Government believes that young people have an obligation to respect our laws and fellow citizens and do their bit to contribute to a safe and just society. This bill will ensure that those who engage in unlawful activity are dealt with appropriately. Young offenders will be forced to face the consequences of their actions and the impact of their offending behaviour on their victims.

I now turn to the Courts and Crimes Legislation Amendment Bill 2008, which provides for miscellaneous amendments to courts and crimes-related legislation and is part of the Government's regular legislative review and monitoring program. The bill will amend a number of Acts in order to improve the efficiency and operation of the courts. The bill will also make several amendments to criminal law and procedure in order to improve the administration of the criminal justice system. Schedule 17 to the bill will amend section 148 of the Medical Practice Act 1992 to provide that judges of Supreme Court status may be appointed to sit on the Medical Tribunal. Currently only judges of the District Court are eligible to be appointed to the Medical Tribunal. The amendments will broaden the pool of judges available to the tribunal.

Schedules 10 and 19 to the bill amend the Supreme Court Act 1970 and the Criminal Appeal Act 1912 to provide that the Chief Judge of the District Court and the Chief Judge of the Land and Environment Court may act as additional judges of the Court of Appeal and Court of Criminal Appeal. The amendments will allow for the appointment of the Chief Judges to the Court of Appeal and the Court of Criminal Appeal as needed, without having to obtain a commission through the Governor on each occasion. Schedule 2 to the Civil Procedure Act 2005 governs the constitution and procedure of the Uniform Rules Committee. Clause 3A of the schedule provides that where a power exists to nominate or appoint a member of the committee, a power also exists to appoint a deputy for that member. This is so that a deputy can attend meetings of the committee where the member is unavailable. Named office holders who are not nominated or appointed in this way currently have no equivalent power to appoint a deputy. Schedule 3 to the bill will amend the Act to clarify that named office holders are able to appoint their own deputies, who will be able to stand in for the office holders when they are not available.

The Supreme Court generally deals with disputes involving large amounts of money or proceedings involving difficult and important questions of law. The District Court generally deals with less complex disputes and proceedings involving smaller amounts of money. In a number of classes of cases currently going to the Supreme Court, the District Court has been identified as a more suitable venue for the cases to be held. These classes of cases involve small claims or proceedings, the subject matter of which is of very limited monetary value. Transferring such cases will free up sitting time for the Supreme Court and will encourage the use of a more appropriate and less expensive forum for resolving smaller matters. Schedules 4, 5, 14, 15, 16 and 18 to the bill will amend, respectively, the Community Land Management Act 1989, the Consumer, Trader and Tenancy Tribunal Act 2001, the Legal Profession Act 2004, the Local Court Act 2007, the Local Courts Act 1982, and the Strata Schemes Management Act 1996, in order to provide that certain minor appeals governed by these Acts are to be held in the District Court.

The Director of Public Prosecutions [DPP] appears in applications and appeals to the District Court and Supreme Court, against convictions and sentences in the Local Court under parts 3 and 5 of the Crimes (Appeal and Review) Act 2001. After taking over an application or appeal from the police, pursuant to section 9 of the Director of Public Prosecutions Act 1986, these matters should be able to be returned to the police where an appeal is upheld and it is remitted to the Local Court. While this is currently the case for matters remitted by the District Court, the DPP currently retains conduct of matters remitted to the Local Court from the Supreme Court. This is on the basis of the reasoning in the New South Wales Court of Appeal in *Price v Ferris* (1994) 34 New South Wales LR 704, where the majority held that once the DPP takes over a matter under section 9 of the Director of Public Prosecutions Act, the original prosecutor ceases to be a party to the proceedings.

Schedule 11 to the bill will amend the Director of Public Prosecutions Act to clarify that where the DPP has taken over a matter for an application or appeal in the Supreme or District Court, the DPP is able to return the matter to the original prosecutor, typically the New South Wales Police, for prosecution where the matter has been remitted to the Local Court. Section 92 of the Crimes (Domestic and Personal Violence) Act 2007 currently provides that the District Court has original jurisdiction to issue an apprehended violence order [AVO] following dismissal of an application by the Local Court or Children's Court. It is not clear whether this requires a full hearing of the matter, rather than a normal appeal or review process. Schedule 8 to the bill provides that a magistrate's dismissal of an application will be reviewable on appeal in the way that magistrate's orders are reviewed elsewhere.

The Supreme Court Act 1970 provides for an appeal to the Court of Appeal in a jury trial when there is an application for the setting aside of a judgement or verdict, a new trial, or the alteration of a verdict by increasing or decreasing any amount of debt, damages or other money. The District Court Act 1973 does not currently make similar provision for an appeal from the District Court to the Court of Appeal in a jury trial. The Court of Appeal recently found in *Keramianakis & Anor v Regional Publishers Pty Ltd* (2008) NSWCA 3, that a right of appeal has never been available in relation to a jury verdict in the District Court. That distinction between the courts creates an anomaly in the treatment of jury trials, and creates the possibility of forum shopping. To rectify that anomaly, schedule 12 to the bill will amend the District Court Act 1973 to ensure that there is an appeal right from jury trials in the District Court, equivalent to the right provided in the Supreme Court.

Schedule 13 to the bill makes a number of amendments to the Land and Environment Court Act 1979 to improve the organisation and procedures of the court. Section 35 (1A) of the Supreme Court Act 1970 provides that the President of the Court of Appeal will be Acting Chief Justice when the Chief Justice is absent from duty. This amendment streamlines the appointment process, reducing the need for an Acting Chief Justice to be appointed by commission under the public seal every time the Chief Justice is absent. The bill amends the Land and Environment Court Act in a similar way to provide that when the Chief Judge is absent from Australia, and no Acting Chief Judge has been appointed, the most senior judge present in Australia will be taken to be the Acting Chief Judge.

The bill amends the Land and Environment Court Act to enhance the prospects of a successful outcome at conciliation conferences. The amendments require that proceedings at a conciliation conference are consistent with the good faith requirements relating to mediations in part 4, section 27 of the Civil Procedure Act 2005. The bill amends the Land and Environment Court Act to improve flexibility in on-site conferences and allows for the specialist expertise of other commissioners to be utilised where appropriate. The amendments permit more than one commissioner to preside over an on-site conference where appropriate; for example, by having a part-time commissioner with expertise in arboriculture assist a permanent commissioner in disputes under the Trees (Disputes Between Neighbours) Act 2006. This amendment makes on-site conferences consistent with section 36 (1) (a) of the Land and Environment Court Act, which provides that the Chief Judge may, on the Chief Judge's own motion or at the request of a party, direct that proceedings be heard and disposed of by one or more commissioners.

The bill amends the Land and Environment Court Act to give the Land and Environment Court power to dispense with an on-site inspection where appropriate. This amendment will facilitate the just, quick and cheap resolution of the real issues in the proceedings, by giving the court the ability to dispense with an inspection where it considers that a matter can be properly determined without an inspection. Currently applications for an easement over land can be made

where the court has made a determination to grant development consent on an appeal under section 97 of the Act. The bill amends the Land and Environment Court Act to provide that applications for an easement over land may also be made when an appeal under section 97 is pending before the court. This amendment will provide more flexibility in procedure, and will allow that applications for an easement relevant to the grant of development consent can be made at the same time as the appeal seeking the grant of development consent.

Section 10A (2) of the Local Courts Act 1982 provides that "a person appointed as deputy registrar has, under the registrar, all the functions of the registrar and may exercise those functions". This provision permits deputy registrars, particularly chamber registrars, to do registrar work, both when registrars are on duty and when registrars are absent from duty. Schedule 15 to the bill inserts this provision into the new Local Court Act 2007. This means that it is consistent with the former legislation and clarifies that when the new Act commences deputy registrars will be able to continue to exercise the functions of registrars.

The Births, Deaths and Marriages Registration Act 1995 currently provides for the issue of new birth certificates for people born in New South Wales who have undergone surgery to change their sex. However, there is no means for transgender people who were born overseas to have their change of sex legally recognised in New South Wales. Similar legislation in Western Australia, the Gender Reassignment Act 2000, provides this legal recognition for people who were born overseas. Schedules 1 and 22 to the bill will amend the Births, Deaths and Marriages Registration Act and regulation to provide that New South Wales residents regardless of where they were born will be able to apply for legal recognition of their change of sex. Applicants who are born overseas will need to satisfy certain requirements in order to obtain a certificate recognising the change of sex.

In order to apply for a certificate recognising their change of sex, applicants will be required to satisfy similar criteria to people born in New South Wales. Applicants must be unmarried and have undergone surgery for the purpose of assisting them to be considered to be a member of the opposite sex. In addition, applicants born overseas will need to show that they are an Australian citizen or permanent resident of Australia and that they live, and have lived, in New South Wales for at least one year. The Births, Deaths and Marriages Registration Act currently provides for legal recognition of a change of sex on the basis that a person has undergone sexual reassignment surgery. The bill amends the Births, Deaths and Marriages Registration Act, adopting the phrase "sex affirmation procedure", in line with updated terminology. That term was recently introduced in Victorian legislation. The bill updates the Births, Deaths and Marriages Registration Act also by removing certain redundant offences and bringing the New South Wales legislation into closer alignment with other jurisdictions.

Schedule 9 to the bill amends the Crimes (Serious Sex Offenders) Act 2006 to extend the application of the Act to offenders who have committed certain offences, and with respect to other matters relating to pre-trial proceedings under the Act. The amendments reflect the Government's ongoing commitment to protect the community from serious recidivist sex offenders. The bill amends the section 5 definition of "serious sex offence" to enable the extended supervision and continuing detention of a person who is convicted of an offence under section 61K, assault with intent to have sexual intercourse, or section 66EA, persistent sexual abuse of a child, of the Crimes Act 1900. The effect of this change will extend to offences committed before the commencement of the amendment.

The amendments will enable the Supreme Court to appoint the following to conduct examinations of offenders during pre-trial procedures as an alternative to two qualified psychiatrists: two registered psychologists; or one registered psychologist and one qualified psychiatrist; or two registered psychologists and two qualified psychiatrists. This amendment affords the court greater flexibility in being able to appoint the type and/or combination of experts that will provide the most relevant and complete information for each specific offender.

Schedule 20 to the bill amends the Surveillance Devices Act 2007, and Schedule 2 amends the Children and Young Persons (Care and Protection) Act 1998, to provide exemptions for the use of optical surveillance devices in specified law enforcement operations. The relevant law enforcement operations are the execution of search and crime scene warrants under the Law Enforcement (Powers and Responsibilities) Act 2002 and certain other Acts; and the execution of a search warrant, entry to and inspection of premises, and the removal of a child from a place or premises, in accordance with the Children and Young Persons (Care and Protection) Act 1998. The amendments are necessary because law enforcement agencies routinely use optical surveillance devices, generally video recordings, during these operations in order to preserve the continuity of evidence. The agency will have already obtained a warrant for the search, and so it is unnecessary to require it to seek an additional warrant for the use of equipment such as a video camera, which is only used incidentally to record the search.

The offence of membership of a terrorist organisation is found under section 310J in part 6B of the Crimes Act 1900. The Crimes Act contains a sunset clause of two years for that offence. The sunset clause is due to come into effect on 13 September 2008. The sunset clause was designed to allow the Commonwealth Government enough time to develop a national covert search warrant scheme pursuant to the Commonwealth Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2007. That scheme was to replace the State scheme. The change in government federally late last year meant that the bill was never debated. The new Commonwealth Government needs time to enact its own delayed notification search warrant scheme. The introduction of such a scheme will ensure consistency between all jurisdictions as to who should investigate terrorism offences and who should prosecute them. It will also provide for the economical use of resources. Schedule 6 to the bill will extend the sunset clause for another two years from 13 September 2008 and will provide ample time for the Commonwealth to pass the necessary legislation.

Schedule 7 to the bill amends the Crimes (Administration of Sentences) Act 1999 to update provisions regarding the conveyance and detention of offenders received from the Australian Capital Territory as a consequence of the replacement of the Removal of Prisoners Act 1968 of the Australian Capital Territory by the Crimes (Sentence Administration) Act 2005. The bill also enables disclosure of information in connection with the administration or execution of interstate laws in their application to inmates who have been transferred interstate.

This bill addresses a number of issues to do with the smooth and effective running of courts in New South Wales, as well as ensuring greater legislative consistency between New South Wales and other Australian jurisdictions. The bill also contains a number of changes necessary for the continuing development of an efficient and equitable criminal justice system. The amendments contained in this bill will improve the operation of the criminal justice system and the courts in New South Wales. I commend the bills to the House.