



NSW Legislative Council Hansard

Courts Legislation Further Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 8 June 2006.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [3.43 p.m.], on behalf of the Hon. John Della Bosca: 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.

This Bill provides for miscellaneous amendments to courts-related legislation, and is part of the Attorney General's regular legislative review and monitoring program.

Civil Procedure Act 2005

Schedule 1 will amend the Civil Procedure Act 2005.

Item 1 amends section 18(2) of the Civil Procedure Act 2005. This section provides that the New South Wales Crown is exempt from paying certain court filing fees in civil proceedings. This exemption existed in former provisions contained in the civil legislation of each Court. The rationale for the exemption is that the imposition of such fees upon the Crown will often represent a transfer of public funds from one Government agency to another and does not generate an increase in revenue to the whole of government. The exemption does not extend to services provided by the Court.

The *Civil Procedure Act 2005* unintentionally extended the exemption in favour of the Crown to Sheriff's fees. The Sheriff charges fees for services including service of process and execution of writs and warrants. The amendment seeks to restore the status of Sheriff's fees to the position that existed prior to the commencement of the Civil Procedure Act 2005 and enable the Sheriff to recover costs for services provided to the Crown.

Item 2 amends section 77 of the *Civil Procedure Act 2005*. This section outlines how money recovered in civil proceedings on behalf of a person under a legal incapacity is to be managed. At present, money recovered on behalf of a minor may only be paid to the Public Trustee and money recovered on behalf of a protected person may only be paid to their manager. The proposed amendment will give the courts discretion to order payments to other persons. In the case of a minor, courts will now be able to order money to be paid to the Public Trustee or such other person as it directs. In the case of a protected person, courts will now be able to order money to be paid to a manager or such other person as it directs.

This reform will reduce administrative costs and allow parties to receive their compensation sooner. For example a court may order a relatively small payment for medical expenses to be made directly to a parent of a child. This would allow the parents to pay their child's medical bills as quickly as possible. It would also avoid administration costs associated with the Public Trustee double handling the payment.

Item 3 inserts a note to section 81 of the *Civil Procedure Act 2005* to make it clear that provisions dealing with interim payments do not apply to an award of damages to which Part 6 of the *Motor Accidents Act 1988* applies. The *Motor Accidents Act 1988* contains separate arrangements for interim payments once liability is admitted. By making this clarification we remove ambiguity about which regime applies.

Item 4 clarifies the courts' power to issue an arrest warrant in civil proceedings. Section 97 presently allows the court to issue a warrant to arrest a person who fails to comply with an order made under the *Civil Procedure Act 2005* or rules of court or any other Act. There is concern that the term "any other Act" may be limited only to Acts passed by the New South Wales Parliament. Sections 12 and 65 of the *Interpretation Act* create a presumption that a reference to an "Act" may be read as an "Act of New South Wales". There are occasions when the court may wish to issue an arrest warrant in reliance of Commonwealth legislation. By way of example, the Supreme Court, when dealing with matters in the Corporations List, may seek to issue an arrest warrant in reliance of provisions under the Commonwealth Corporations Act.

To avoid any doubt that the court may rely on Commonwealth law the section is amended to refer to "any other law". The term "law" is a broader term that includes state and commonwealth statute law as well as the common law. As a matter of practice, the Parliamentary Counsel uses the broader term "law" to refer to both State and

Commonwealth Statute.

Item 5 amends section 113 of the Act. Section 113 sets out a procedure to enable a judgment debtor to sell or mortgage land, which is the subject of a writ for levy of property with the consent of the Sheriff. Where consent is obtained for the mortgage of property it is the practice of the Sheriff to endorse his or her consent on the mortgage. Section 113(6) incorrectly refers to the Sheriff endorsing his or her consent on the "agreement". There is no recognised instrument being an "agreement for mortgage". The proposed amendment will make it clear that the Sheriff is to endorse his or her consent on the mortgage.

Drug Court Act 1998

Schedule 2 makes some minor, but important amendments to the *Drug Court Act 1998* with respect to the eligibility criteria for the Compulsory Drug Treatment Program. The Drug Court will have the power to order eligible offenders to be sent to a special correctional facility dedicated to abstinence-based treatment, rehabilitation and education. The program is aimed at offenders who have long-term drug addictions and an associated life of crime.

Item 1 adjusts the criteria to allow offenders with an unexpired non-parole period of 18 months at the time of sentence to access the program. Currently, an offender must have an unexpired non-parole period of at least 18 months at the time the Drug Court makes the compulsory drug treatment order. This means that an offender who has an 18 month non-parole period at the time of sentence will automatically become ineligible by the time the matter is assessed by the Drug Court. The amendment will increase the potential referrals by preventing offenders from lapsing out of eligibility due to the processing time between referral by a sentencing court and the making of the Drug Court's compulsory drug treatment order. Without this change, offenders with an unexpired non-parole period of 18 months at the time of sentence would become ineligible the next day and, as a consequence, prevent the Drug Court the opportunity to consider making a drug treatment order.

Item 2 will adjust the recidivism criteria of eligible offenders from three prior convictions in the past five years to two prior convictions. This will mean that offenders on the program will have committed a total of three offences in a five year period. The program will remain consistent with the Government's commitment for the program to target recidivist offenders.

Item 3 will remove the automatic exclusion of offenders convicted at any time of an offence involving serious violence but will require the Drug Court to have regard to the offender's history of committing offences involving violence as part of the assessment of the offender's suitability for the program. The amendment will create greater flexibility for the Drug Court to consider whether offenders who may have committed an offence involving violence at some point in their criminal history should nonetheless be suitable for the program. The existing blanket exclusion would preclude any further consideration of these issues.

Land and Environment Court Act 1979

Schedule 3 amends the *Land and Environment Court Act 1979* to allow the court to order the joinder of a person as a party to an appeal against a consent authority's decision to modify a development consent. Decisions in relation to development consents can affect persons in the neighbourhood or the community other than the parties to the proceedings. Therefore it is important that the Land and Environment Court have the power to join third parties to appeal proceedings relating to these decisions.

At present the Land and Environment Court may join third parties in appeals for the granting of a development consent and appeals against the granting of a development consent. However, if there is a modification of a development consent then there is no such power. The proposed amendment will rectify this oversight.

Under this provision the Court will be able to join a third party to an appeal against the modification of a development consent if the Court is of the opinion that it is interest of justice or in the public interest, or the third party is able to raise issues that would not be likely to be sufficiently addressed if they were not joined as a party.

These amendments will improve the efficiency and operation of the courts.

I commend the Bill to the House.