Bill introduced on motion by Mr Greg Smith, read a first time and printed.

Second Reading

Mr GREG SMITH (Epping—Attorney General, and Minister for Justice) [10.14 a.m.]: I move:

That this bill be now read a second time.

The Government is pleased to introduce the Courts and Other Legislation Further Amendment Bill 2012, the purpose of which is to make miscellaneous amendments to legislation affecting the operation of courts in 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 the Anti-Discrimination Act 1977 by repealing section 49ZYA (3). The purpose of the amendment is to clarify the definitions of a "relative" or an "associate" under the Act. The Anti-Discrimination Act 1977 prohibits discrimination against a person on the bases of certain protected characteristics. These include race, sex, transgender, marital or domestic status, disability, homosexuality and age. The Act also prohibits discrimination against a relative or associate of a person with one or more of those protective characteristics. The Act currently contains two definitions of the terms "relative" and "associate". The general definition in section 4 applies to all of the protected characteristics, and the specific definition in section 49ZYA (3) applies only to the characteristics of age. These definitions are virtually identical but the duplication of definitions is confusing. For this reason the bill repeals the specific definition at 49ZYA (3). The general definitions of "relative" and "associate" in section 4 will continue to apply to all discrimination against a relative or associate, including on the ground of age.

The first proposed amendments to the Births, Deaths and Marriages Registration Act 1995 in schedule 1.2 to the bill is to replace references to a "memorandum of adoption" with a "record of adoption" in section 25 of that Act. This is to allow for consistency with the terminology used in the rest of the Act and in the Adoption Act 2000. The second amendment to the Births, Deaths and Marriages Registration Act 1995 is to empower the registrar of births, deaths and marriages to allow officers of law enforcement agencies to have access to applications to register a change of name. Under section 46A of the Births, Deaths and Marriages Registration Act the registrar of births, deaths and marriages may permit access by law enforcement agencies, including the NSW Police Force, to entries in the register

regarding changes of name.

Under part 5 of the Births, Deaths and Marriages Registration Act and the Child Protection (Offenders Registration) Act certain classes of people, such as child sex offenders and former serious offenders, are restricted from changing their name without the approval of the New South Wales Commissioner of Police. It is proposed to amend section 46A of the Births, Deaths and Marriages Registration Act to clarify that the registrar may provide information to the NSW Police Force about change of name applications before they are registered. If a restricted person applies to change his or her name, the NSW Police Force has an opportunity to object to the registration prior to its occurring rather than merely being notified of the registration after the fact.

Schedules 1.3 and 1.4 to the bill amend the Children (Community Service Orders) Act 1987 and the Children (Detention Centres) Act 1987 to create an exemption from privacy legislation provisions that currently prevent Juvenile Justice from sharing certain information in relation to young people. This will assist the State Debt Recovery Office to offer Juvenile Justice clients with outstanding fines an alternative payment option in relation to the fines. State Debt Recovery Office administers the collection, administration and enforcement of fines and penalties on behalf of New South Wales. The young people in the juvenile justice system experience extra difficulties due to fines and penalties. There is no process to automatically put the fine of a young person on hold while they are in custody or on a community service order.

The nondisclosure provisions in section 28A of the Children (Community Services Order) Act 1987 and section 37D of the Children (Detention Centres) Act 1987 currently prevent Juvenile Justice from advising the State Debt Recovery Office if a young person is in the care or custody of Juvenile Justice. Permitting the State Debt Recovery Office to access and disclose information to Juvenile Justice about young offenders with outstanding fines and penalties will help increase participation by young offenders in work and development orders under section 99B of the Fines Act 1996. This will help reduce young offender's problems with outstanding fines by allowing them to work off the value of the fine through unpaid work, training or counselling.

Schedule 1.5 to the bill amends the Children's Court Act 1987 to omit the requirement for the President of the Children's Court to oversee, in accordance with the rules, the courses of training to be attended by children's magistrates and prospective children's magistrates as there are currently no rules relating to such training. Section 16 of the Children's Court Act 1987 sets out the functions of the President of the Children's Court. Under section 161G these functions include the oversight of training of children's magistrates and prospective children's magistrates in accordance with the rules. The amendment will have no impact on the operation of the Children's Court and will not substantively change the functions exercised by the President of the Children's Court. The President of the Children's Court requested the amendment.

I turn to the proposed amendment to the Civil Procedure Act 2005 and Civil Procedure Regulation 2012. Schedule 1.6 to the bill repeals part 2A of the Civil Procedure Act 2005, and schedule 1.7 makes a consequential amendment to the Civil Procedure Regulation 2012. Part 2A was inserted into the Civil Procedure Act in late 2010 but has never commenced. If operational, part 2A would have required parties to take reasonable steps to resolve or narrow issues in dispute before commencing court action from October 2011. These provisions were not commenced due to concerns raised by a range of key stakeholders in early 2011, including parts of the legal profession, members of the judiciary and some industry associations, including those representing commercial debt collection agents.

In mid-2011 the Government postponed the commencement of part 2A for 18 months to allow for the evaluation of similar Commonwealth provisions that were introduced around the same time as part 2A. At the time of the postponement, the Government made it clear that it wished to make an evidence-based decision about the efficacy of these types of provisions and whether they should apply to proceedings in New South Wales courts. The Commonwealth evaluation of the equivalent Federal provisions has only just started and the evaluation timetable is likely to be lengthy, with a report unlikely until sometime in 2014. Accordingly, there is no reliable statistical data yet to assess the likely efficacy of part 2A and it is not appropriate for it to automatically commence in March 2013, which would be the case if this repeal did not proceed.

A number of local stakeholders have recently queried whether part 2A will commence. Given that the lead time between disputes arising and the commencement of court proceedings can often be several months, the legal profession is understandably anxious to know whether it should start advising its clients of the potential for part 2A to apply to their disputes. Repealing these provisions now will provide greater certainty during the Commonwealth's evaluation period. The Government remains open to the possibility of implementing reforms of this type in the future, but is committed to doing so in the knowledge that these sorts of reforms improve, rather than hinder, the process of resolving civil disputes in a way that is just, quick and cheap, as required by the statutory objectives of the Civil Procedure Act.

Schedule 1.8 to the bill amends section 9A of the Court Security Act to prohibit the unauthorised use of any device, including a smart phone or tablet, to transmit sounds, images or information forming part of court proceedings from a room, or other place where a court is sitting, to another place. Section 9 of the Court Security Act 2005 currently states that a person must not use a recording device to record sound or images, or both, in court premises. This prohibition is subject to certain exceptions such as where a judge expressly grants approval for the use of a recording device. The maximum penalty is 200 penalty units, imprisonment for 12 months, or both.

These amendments address recent security incidents in courts that have highlighted the fact that the existing legislation does not capture the capability of recent technology—for example, people in court transmitting witness evidence by smart phone to another witness waiting outside the court to give evidence. However, it is important to preserve the principle

of open justice. Although not common, there may be circumstances in which journalists wish to use electronic devices to report on proceedings contemporaneously through new media, such as twitter or by blogging. While these circumstances are not expressly covered in the proposed statutory exceptions, there is a regulation-making power that will allow appropriate exemptions to cover these sorts of circumstances. The amendments in this bill will not commence until a date set by proclamation. This will allow time for appropriate regulations to be drafted. The regulations will be drafted in consultation with the courts and relevant stakeholders.

Schedule 1.9 to the bill amends section 59 (2) of the Crimes (Appeal and Review) Act 2001 to provide that the court may set aside an order and make such other order as it thinks just, or dismiss an appeal in relation to section 56 (1) (e) of the Crimes (Appeal and Review) Act 2001. Section 59 of the Crimes (Appeal and Review) Act 2001 concerns criminal appeal determinations in the Supreme Court. Currently, section 59 (2) provides that the Court may determine an appeal against an order referred to in section 56 (1) (b), (c) or (d) or 57 (1) (b) or (c). However, it is silent on orders referred to in section 56 (1) (e), which refers to costs orders made by the Local Court against a prosecutor in summary proceedings. This seems to have been a legislative oversight that was noted by the decision of Justice Simpson in the case of *Morse v AI-Jubouri* [2011 New South Wales Supreme Court 1330]. The Chief Justice proposed the amendment and the Chief Magistrate was consulted and agreed with the proposal.

I now turn to the repeal of the Inebriates Act 1912. On 28 November 2011 the Government approved the state-wide implementation of the Involuntary Drug and Alcohol Treatment Program under the Drug and Alcohol Treatment Act 2007. The Involuntary Drug and Alcohol Treatment Program offers a more effective, health-based approach to the treatment of substance dependence than the Inebriates Act 1912, which provides for the care, control and treatment of people with severe substance dependence, including involuntary detention for up to 12 months. Since the commencement of the Involuntary Drug and Alcohol Treatment Program on 4 September 2012, the Inebriates Act no longer applies to adults. Only minors can be detained under Inebriates Act court orders. Schedule 1.13 to the bill repeals the Inebriates Act to avoid the potentially inequitable treatment of minors. Over the last decade, less than five minors have been managed under the Inebriates Act.

The Involuntary Drug and Alcohol Treatment Program applies only to adults as it is not considered an appropriate intervention for minors. Research indicates that the treatment of minors with substance misuse issues is better approached in terms of mental health and adolescent and family health, as well as developmental and educational concerns, rather than exclusively dealing with drug and alcohol use. Due to the different manifestation of drug and alcohol problems in young people, treatment programs for young people should be designed to address their complex needs.

Various specialist programs have been designed for young people with persistent drug and alcohol concerns, including group programs, counselling services and rehabilitation. These

programs are voluntary, in suitable settings for minors, and are conducted by staff that have the skills to work with young people. The Involuntary Drug and Alcohol Treatment Program is a move towards a more effective, health-based approach for people with severe substance dependence and it would be inequitable to leave only minors subject to the Inebriates Act. Schedules 1.10 and 1.11 to the bill make consequential amendments to the Drug and Alcohol Treatment Act 2007 and the Drug and Alcohol Treatment Regulation 2012 that are required because of the repeal of the Inebriates Act.

Schedule 1.12 amends the Fines Act 1996 to allow for the delegation of the power to approve organisations with which a person subject to a work and development order may undertake activities to satisfy the order. The Work and Development Order Scheme allows a person who has a mental illness, has an intellectual disability or cognitive impairment, is homeless, is experiencing acute economic hardship or has a serious addiction to drugs, alcohol or volatile substances, to reduce their fine debt through activities, including volunteer work with an approved organisation. At present, only the Director General of the Department of Attorney General and Justice can grant approval to these organisations. To improve the efficiency of the process, a power to enable director general to delegate this power of approval will be created.

I turn to the amendments to the Jury Act 2010. The Jury Amendment Act 2010, which has not yet commenced, will introduce a new system of eligibility for jury service. The aim of the amendments was to increase the pool of available jurors and to make juries more representative. One of the changes that was to be made was to permit most Australian lawyers to serve as jurors, with some limited exceptions for people engaged in criminal practice and occupying certain public positions such as the Ombudsman and the Director of Public Prosecutions. This would have meant that many people who are admitted as solicitors or who practise law could serve as jurors so long as they were not engaged in criminal law practice. The Government does not support this position, and so schedule 1.14 to the bill includes amendments to retain the current position; that is, that people who are admitted as lawyers should not be able to serve as jurors. I think that is a very wise change.

Mr Paul Lynch: Hear, hear!

Mr GREG SMITH: I note that the shadow Minister agrees. There is a risk that lawyers' legal knowledge could place them in a position to unduly influence other jurors, especially given the lack of procedures for resolving disputes within the jury room. Even the appearance of undue influence could discredit the jury system. The Government considers that these risks outweigh the potential benefits of having admitted lawyers serve as jurors. Schedule 1.14 to the bill also includes amendments to retain the current position in relation to carers, so that full-time carers who live with the person they care for can claim an exemption "as of right". This will ensure that carers in this situation do not have to establish "good cause" as to why they should not have to serve on a jury. The Government does not consider that carers in this position should have to establish, for example, an inability to arrange alternative full-time care. Finally, the bill also ensures that people who are subject to control orders or interim

control orders under the Crimes (Criminal Organisations Control) Act 2012 are excluded from jury service.

I turn to the amendments to the Land and Environment Court Act 1979. Schedule 1.15 to the bill amends the Land and Environment Court Act to provide that commissioners whose term of appointment has expired can complete or otherwise continue to deal with any matters relating to proceedings that have been heard, or partly heard, by the person before the expiration of that period. The Land and Environment Court Act currently has similar provisions in relation to acting judges and part-time commissioners whose period of appointment has expired. This bill will bring the provisions in relation to full-time commissioners into line with those for acting judges and part-time commissioners. There are also similar provisions in place in other legislation, including in relation to members and acting members in the Administrative Decisions Tribunal, acting members and acting judicial members in the Industrial Relations Commission, acting judges in the Supreme Court and District Court and acting magistrates in the Local Court.

I turn to amendments to the New South Wales Trustee and Guardian Act 2005. Schedule 1.16 to the bill amends section 13 (2) (a) of the New South Wales Trustee and Guardian Act 2009 to clarify that the New South Wales Trustee and Guardian cannot accept a trust under a deed of arrangement for the benefit of creditors. Section 13 (2) (a) of the New South Wales Trustee and Guardian Act 2009 prevents the New South Wales Trustee and Guardian from accepting trusts under a deed of arrangement. It is based on section 12 (4) of the repealed Public Trustee Act 1913. However, paragraph (a) of subsection (2) of section 13 of the Act fails to include the phrase "for the benefit of creditors", which appeared in the previous legislation. The New South Wales Trustee and Guardian raised concerns that the omission of the words "for the benefit of creditors" substantially alters the New South Wales Trustee and Guardian's capacity to accept appointments. It could be interpreted as meaning that the New South Wales Trustee and Guardian cannot accept appointment under any deed of arrangement, even one that is not intended as an agreement for the payment of creditors.

A deed of arrangement is a legal document that sets out an agreement between various parties. In insolvency and bankruptcy law, it refers specifically to an insolvent person and the arrangement that he or she enters into with creditors. However, under trust law, a deed of arrangement also refers to an agreement between the estate beneficiaries calling on the executor or administrator to deal with that estate in a way that would otherwise constitute a breach of trust. For example, it is often referred to in respect of a deed by which a life tenant or a remainderman disclaims or surrenders their interests. It is, therefore, proposed that the words "for the benefit of creditors" be reinserted so that section 13 (2) (a) of the New South Wales Trustee and Guardian Act 2009 reflects section 12 (4) of the Public Trustee Act 1913.

I turn to the amendments to the Probate and Administration Act 1898. Schedule 1.17 to the bill amends the Probate and Administration Act 1898 to make several minor amendments, including to provide for certain minor matters to be approved rather than prescribed by the rules. The need for these amendments was identified during the preparation of revised court

rules under the Act. The Supreme Court supports the amendments and a working group of succession law experts consulted on the amendments indicated their support. Schedule 1.18 to the bill makes minor amendments to standardise provisions about acting judicial officers, to update terminology, to omit references to the repealed Inebriates Act 1912 and to deal with other matters of a statute law revision nature. I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a later hour.