

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, and Minister for Justice) [4.07 p.m.]: 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 court related legislation, and is part of the Attorney General's regular legislative review and monitoring program.

Administrative Decisions Tribunal Act 1997Administrative Decisions Tribunal Act 1997

The Administrative Decisions Tribunal can make orders to give effect to any agreement or arrangement arising out of a mediation session. However, evidence of any thing said or of any admission made in a mediation session is not admissible in any proceedings before any court, tribunal or body. This causes a practical problem. Strictly speaking the tribunal cannot admit evidence about an agreement reached during a mediation session however it needs this information in order to be able to give effect to the agreement. The bill will allow a document that is signed by the parties to be admitted as evidence of an agreement or arrangement reached during a mediation session. Similar arrangements apply in relation to mediations occurring under the Civil Procedure Act 2005.

The Administrative Decisions Tribunal Act 1997 is also to be amended to allow the President of the Administrative Decisions Tribunal to issue practice notes.

Civil Procedure Act 2005Civil Procedure Act 2005

In August 2005, the Civil Procedure Act (CP Act) and Uniform Civil Procedure Rules (UCPR) introduced common civil procedures in the main civil courts in New South Wales. When the former Attorney General introduced the Civil Procedure Bill into Parliament, he indicated that the Civil Procedure Act and the Uniform Civil Procedure Rules could be applied to other courts and tribunals exercising civil jurisdiction in the future.

The Land and Environment Court is to be brought into the civil procedure regime. The bill will amend schedule 1 of the Civil Procedure Act to apply the Act and the Uniform Civil Procedure Rules in civil proceedings in the Land and Environment Court.

One of the reasons why it will be useful for the Civil Procedure Act and the Uniform Civil Procedure Rules to apply in the Land and Environment Court is that it will make it easier for people to locate all of the rules that apply in that court.

The Land and Environment Court currently relies on the version of the Supreme Court Rules that was in force before the commencement of the Civil Procedure Act and the Uniform Civil Procedure Rules to regulate much of its civil procedure. People find it difficult to locate the correct version of the Supreme Court Rules. It will be easier for litigants if they do not have to rely on the old Supreme Court Rules and can rely instead on the equivalent rule in the Uniform Civil Procedure Rules.

Consequential amendments will be made to the Civil Procedure Act as a result of applying the civil procedure regime in the Land and Environment Court. These include:

Dealing with the transfer of civil proceedings from the Supreme Court to the Land and Environment Court under Part 9 of the Civil Procedure Act instead of under sections 72 and 73 of the Land and Environment Court Act. Sections 72 and 73 will continue to apply to the transfer of non-civil proceedings.

Giving the Land and Environment Court representation on the Uniform Rules Committee.

The bill will also amend the Civil Procedure Act to allow deputies to be appointed for members of the Uniform Rules Committee. This will enable the courts, the Bar Association and the Law Society to send another person to a Uniform Rules Committee meeting if a regular member cannot attend a meeting.

Section 76 of the Civil Procedure Act requires the court to approve compromises or settlements where proceedings have been commenced by or on behalf of a person under legal incapacity. The section was based on the now repealed s.4 of the Damages (Infants' and Persons of Unsound Mind) Act 1929 and SCR Part 63 rule 11.

Hammerschlag J has identified a problem in the drafting of s.76 in *Permanent Trustee v Mills* [2007] NSWSC 336. The section has inadvertently removed the requirement for the court to approve a compromise or settlement where the person under legal incapacity is a defendant (rather than a plaintiff) in the proceedings.

The bill will amend s.76 to require the court to approve a compromise or settlement where the person under legal incapacity is a defendant in the proceedings.

Confiscation of Proceeds of Crime Act 1989

The Government is about to commence provisions that will allow courts to make drug proceeds orders, and enable police to seek and courts to confirm freezing notices. Freezing notices are an interim measure for restraining and managing "tainted property" pending the finalisation of criminal proceedings, at which time confiscation orders may be sought if a defendant has been convicted.

Before these provisions can commence, it is necessary to clarify a Local Court's jurisdiction to deal with these matters. The bill will clarify a Local Court's jurisdiction in this regard.

Coroners Act 1980

Following disasters such as the Bali bombings and the Asian Tsunami, the Standing Committee of Attorneys General have been considering "how to improve national co-ordination of coronial" functions in an emergency or disaster.

A number of initiatives have been implemented including amendments to the Federal privacy legislation to enhance information exchange during emergencies or disasters and establishing a national Coronial Liaison Officers Network, to improve information exchange between coroners.

Ministers also recognised that a State or Territory Coroner may need to call on assistance from coroners in other States or Territories during an emergency or disaster. They developed a model "aid to coroners" provision which is to be included in each jurisdiction's coronial legislation.

This provision will make it clear that a State or Territory Coroner may use any of his or her powers to assist a coroner of another State or Territory to investigate a death, suspected death, fire or explosion. The bill will implement this provision in New South Wales.

District Court Act 1973 and Local Courts Act 1982

The District and Local Courts have merged their registry operations. The change allows the courts to offer a better registry service to clients throughout the State. Registrars and court staff at each location need to have power to deal with both District Court and Local Courts proceedings.

The bill will allow Local Court registrars, deputy registrars and other court officers to exercise the powers of District Court registrars, deputy registrars or court officers and vice versa.

Land and Environment Court Act 1979

The bill will make consequential amendments to the Land and Environment Court Act as a result of applying the civil procedure regime in the Land and Environment Court. These include:

Providing that some sections will not apply to civil proceedings, where the subject matter will in future be regulated by the Civil Procedure Act and Uniform Civil Procedure Rules.

For example, section 67 of the Land and Environment Court Act deals with the court's powers as to the production of evidence. This section will not apply in class 1, 2, 3 or 4 proceedings, as the Civil Procedure Act and Uniform Civil Procedure Rules deal with this matter.

Allowing evidence about an agreement reached at or after a conciliation conference to be provided to a commissioner so that he or she can dispose of the proceedings in accordance with the agreement. Similar arrangements apply in relation to mediations occurring under the Civil Procedure Act 2005.

The bill will also remove references to Divisions of the Land and Environment Court. Divisions are useful in large jurisdictions (such as the Supreme Court) as they allow a court to separately manage large volumes of particular types of proceedings. By contrast, Divisions can add an unnecessary administrative burden in small jurisdictions, which do not need the additional management layer.

Despite the terms of its enabling legislation, the Land and Environment Court does not operate by dividing its business amongst Divisions of the court. It is a small jurisdiction (compared to other courts) and the use of Divisions has proved unnecessary. The Land and Environment Court will continue to manage proceedings according to their class.

Supreme Court Act 1970

The bill makes a number of amendments to the Supreme Court Act.

Although the Supreme Court and the Court of Criminal Appeal are constituted as different courts, the Supreme Court provides registry services for both courts.

The bill will allow a registrar or officer of the Court of Criminal Appeal to exercise the powers of a Supreme Court registrar or officer in the same way that a Supreme Court registrar or officer can already exercise the powers of a registrar or officer of the Court of Criminal Appeal.

An acting Chief Justice can be appointed by commission under the public seal while the Chief Justice is absent from duty. A significant amount of paperwork is involved each time a person is appointed by commission under the public seal. In practice, the President of the Court of Appeal is always appointed as Acting Chief Justice when the Chief Justice is absent from duty.

The bill will provide that the President of the Court of Appeal will be the Acting Chief Justice when the Chief Justice is absent from duty if a person has not been appointed by commission.

I commend the bill to the House.