

ACTS AMENDMENT (JUSTICE) BILL 2007

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Minister for Child Protection)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan - Minister for Child Protection) [10.32 pm]: I move -

That the bill be now read a second time.

In 2004 the government introduced a significant package of legislation which radically reformed Western Australia's court system. The courts reform program was the response of the government to various reform recommendations and initiatives proposed by the Law Reform Commission of Western Australia and the court and tribunal services division of the Department of the Attorney General.

In May 2005 the new Magistrates Court became operative as did the eight acts comprising the legislative package. The reform of the Magistrates Court saw the repeal of acts that had been in place for over 100 years, such as the Justices Act 1902 and the Local Courts Act 1904. The total legislative package was also the largest single implementation of law reform recommendations to ever occur in this state with 221 recommendations implemented. Because of the magnitude of this change, the Attorney General considered it critical that the effectiveness of the legislation be reviewed as soon as was reasonably possible after the new laws came into operation.

In November 2005 the Attorney General commissioned a comprehensive review in order to identify opportunities to improve the legislation's effectiveness. The review was welcomed and supported by the judiciary and stakeholders who contributed to the bill's development during an extensive consultation process. This bill not only progresses the review recommendations but also is a vehicle for proposed amendments to other acts that have been recently introduced by this government or are connected to the reform program. The amendments in this bill will improve procedural aspects of existing legislation necessary for the administration of justice.

The bill provides for 104 technical amendments to 29 acts. The first act to be amended by the bill is the Children's Court of Western Australia Act 1988. Part 2 of the bill corrects a procedural void in the Children's Court of Western Australia Act 1988 and provides for orders and judgements made in the court's non-criminal jurisdiction to be enforced in accordance with the provisions of the Civil Judgments Enforcement Act 2004. The Civil Judgments Enforcement Act 2004 was part of the 2004 reform package and provides for an efficient, flexible and unified system of enforcing civil judgements through courts that has been welcomed by thousands of innocent people who were owed money and struggled to recover it from recalcitrant debtors under the old outdated laws.

The Civil Judgments Enforcement Act 2004 is also amended by this bill. Some minor amendments of a housekeeping nature clarify issues relating to enforcement against land, contempt provisions, representation at a default inquiry and the procedure for the court to amend orders. The bill also responds to a concern of the Chief Magistrate that in many instances the distance required to be travelled to attend a means inquiry is causing hardship for judgement creditors. To overcome this problem, which affects only the Magistrates Court, the bill provides that the court be given authority to conduct the means inquiry in the absence of the judgement creditor where the judgement creditor so requests the court prior to the inquiry.

The proposed amendments found in part 4 of the bill are to streamline procedures in the Commercial Tenancy (Retail Shops) Agreements Act 1985 that involve the State Administrative Tribunal and to ensure that the tribunal has sufficient powers to resolve all issues relating to commercial tenancies that come before it. Nothing in the State Administrative Tribunal Act 2004 expressly gives the tribunal the power to grant equitable relief, especially in the commercial tenancy context. The president of the State Administrative Tribunal, supported by the Chief Justice, believes it would be unfortunate if some of the issues that may arise in respect of a matter that otherwise falls squarely within the State Administrative Tribunal's primary jurisdiction have to be decided separately in a separate Supreme Court or District Court proceeding. This would not be conducive to meeting the expectations of parties that the State Administrative Tribunal is a "one stop" decision-making service. If equitable issues can be determined only in the Supreme Court or the District Court, then some proceedings in the tribunal may well need to be adjourned indefinitely, or made subject to a determination of one or other of those courts. This is not in the interest of good judicial administration as it will only cause delay in the early determination of a proceeding and add to the costs of the parties. The bill remedies this situation.

The president of the State Administrative Tribunal has also suggested a range of amendments to other acts that will lead to greater efficiency of the tribunal's operations. These suggested amendments are reflected not only in

the State Administrative Tribunal Act 2004 but also in other acts that prescribe a role for the tribunal; namely, the Equal Opportunity Act 1984, Guardianship and Administration Act 1990 and Planning and Development Act 2005.

An important change to the way the courts pay witnesses and jurors is found in the bill and involves amendments to the Evidence Act 1906 and the Juries Act 1957. Currently, payments are made to witnesses and jurors on the basis that the recipients of loss of income payments are responsible for declaring payments in their annual tax returns. Consequently, no tax is withheld nor payment summaries issued. In May 2006, the Australian Tax Office advised the Department of the Attorney General that payments to witnesses and jurors for loss of income are deemed to be taxable income. To obviate the need to withhold tax and issue payment summaries, the Attorney General agreed with a proposal to eliminate direct loss of income payments to any witnesses and jurors who are not self-employed. This will result in all loss of income payments generated by witnesses giving evidence and jurors performing jury duty being made to employers or self-employed jurors or witnesses.

It is important to note that in most other Australian jurisdictions the employer is responsible for a large proportion of the juror payment and there is no entitlement for the employer to claim reimbursement from the state. Employers in Western Australia are, therefore, in a far better position than some of their interstate counterparts in respect of the impact of their employees performing jury service.

This government's commitment to afford greater protection to victims of family and domestic violence was reflected by extensive amendments to the nature of and procedure for restraining orders introduced by the Acts Amendment (Family and Domestic) Violence Act 2004. Over the past two and a half years, the courts, the police and Legal Aid have "road tested" these new procedures and have identified how improvements to the 2004 amendments can be made. This bill responds to those recommendations with a second round of amendments to the Restraining Orders Act 1997.

As a separate issue, the Acts Amendment (Family and Domestic) Violence Act 2004 requires that there be a review of the effectiveness of "police orders", which was a new weapon introduced into the restraining order armoury. This statutory review is currently well underway and has been extended to include any other improvements to the restraining order process that might involve a new initiative or change in policy where it would be appropriate to engage in wide public consultation.

Finally, I highlight amendments to section 133 of the Transfer of Land Act 1893 as another example of the continuous refinement of legislation so that the law can best serve the interests of the state and its citizens. This single section is a linchpin amongst amendments that implemented a 2001 report of the Law Reform Commission of Western Australia on writs and warrants relating to the registration of warrants against land. Again, these 2004 amendments have been "road tested" by Landgate and the sheriff, and the bill contributes to procedural improvements.

This bill is an integral part of a reform program that delivers on commitments we have made with faster, less expensive and more customer-focused courts, tribunals and justice services.

Debate adjourned, pursuant to standing orders.