

COURTS LEGISLATION AMENDMENT BILL 2012

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [5.48 pm]: I move —

That the bill be now read a second time.

This bill amends the Criminal Procedure Act 2004 and the Magistrates Court (Civil Proceedings) Act 2004. This bill addresses two issues: the powers that may be conferred on a registrar of a superior court—namely, the Supreme or District Courts—to facilitate the case management of prosecutions on indictment; and the power of the District Court and the Supreme Court to extend the time to entertain appeals from decisions of the Magistrates Courts.

The first issue is the subject of part 2 of the bill. Section 124 of the Criminal Procedure Act empowers the Supreme and District Courts to make rules of court to regulate the practice and procedure to be followed by that court in respect of that court's criminal jurisdiction. Presently, section 124(5)(a) provides that each court may confer on a registrar of that court jurisdiction to deal with applications and other matters that do not involve the final determination of a prosecution. Doubt has emerged as to the extent of the powers that rules of court can invest in registrars. In the case of the District Court, this has resulted in the need to provide limited judicial commissions to registrars in order to ensure that they can carry out many functions relating to routine case management in a manner that will not leave their decisions open to challenge. The amendments to the Criminal Procedure Act contemplated by clause 4 of the bill will enable the rules to delegate to a registrar of the Supreme or District Court the whole of that court's criminal jurisdiction, excepting the jurisdiction to find a person guilty or not guilty of an offence; to discharge an accused from a charge; to consent to the discontinuance of a charge in a case where the accused does not consent to the discontinuance; to stay a prosecution; to set aside a committal; or to find a person guilty of contempt of the court. A person dissatisfied with a decision of a registrar will be able to appeal the decision to a judge of the court. The appeal cannot be commenced more than 21 days after the date of the registrar's decision unless a judge gives leave to extend the time. The appeal is to be by way of a new hearing of the issue that was before the registrar.

The effect of the amendments will be that a registrar will be able to deal with most interlocutory aspects of a criminal matter—including decisions as to bail—short of making final determinations that should be reserved to a judicial officer. This will release judges from the more routine aspects of case management preliminary to trials and provide for the more efficient and effective use of judicial and court resources. The amendments have been referred to the Chief Justice and the Chief Judge for comment. Both support the amendments being made.

The second issue dealt with by the bill is addressed in part 3, which amends the Magistrates Court (Civil Proceedings) Act 2004 (WA). The amendment to section 40 of that act will clarify the power of the District Court to extend the time available to appeal to the District Court against decisions of the Magistrates Court. At present the act provides that an appeal must be made within 21 days of a judgement. There is no mention in the act of a power to extend the time. There are conflicting decisions of the District Court as to whether there is any power to extend time to appeal.

In *Wise v Proprietors of Strata Plan 21513* [2008] WADC 80 and *Lau v Chau* [2009] WADC 172, different District Court judges held that section 40 of the Magistrates Court (Civil Proceedings) Act was not clear enough to remove the general power of the court to extend time limits. However, in the cases of *McKeon v Knapton* [2009] WADC 170 and *Wilson v Westpac* [2011] WADC 13, other judges held that there was no power to extend the time limit to appeal. The amendment to section 40 will make it clear that the court can extend time to appeal and that the appeal must be conducted in accordance with the rules of the court. For consistency and certainty, a similar amendment is made to section 42 of the Magistrates Court (Civil Proceedings) Act relating to appeals from the District Court to the Court of Appeal.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 5079.]

Debate adjourned, pursuant to standing orders.

