

proceed to final hearing will be heard and determined by judges of the court.

The Bracks government fully supports this initiative of the Supreme Court, which is entirely consistent with the government's commitment to timely access to justice principles.

Civil appeals from the County Court to the Court of Appeal

The bill brings greater consistency between the Supreme Court Act 1986 and the County Court Act 1958 in civil appeals to the Court of Appeal. There are currently two inconsistencies that this bill will remove. These are in relation to appeals on costs and the operation of an appeal as a stay of proceedings.

The bill provides that appeals from the County Court for an order or judgement on a question of costs to the Court of Appeal will require the leave of either the Court of Appeal or of the County Court judge who made the order. The Supreme Court Act 1986 already provides that an appeal from the trial division of the Supreme Court to the Court of Appeal on the question of costs requires leave.

The bill removes a constraint on the County Court in relation to its ability to determine whether a stay of proceedings is just or appropriate on an appeal to the Court of Appeal. The bill will bring consistency to civil appeals from both the County Court and the trial division of the Supreme Court to ensure that an appeal from either jurisdiction does not operate as a stay unless so ordered by the court.

There is a particular benefit in reducing inconsistencies between the trial division of the Supreme Court and the County Court in civil proceedings following the commencement of part 2 of the Courts Legislation (Jurisdiction) Act 2006 on 1 January 2007. As the County Court now has an unlimited jurisdiction in civil matters, parties can issue civil proceedings in either jurisdiction and would be more likely to experience these inconsistent appeal rights.

Koori Court (criminal division) of the Children's Court

The bill amends the Children, Youth and Families Act 2005 to enable an extension of the sunset date for children's Koori Court to 1 July 2009.

The majority of the provisions of the Children, Youth and Families Act 2005 commenced operation on 23 April this year. Section 605 of the act will repeal each of the Koori Court (criminal division) provisions of the

act. Section 2(3) states that section 605 comes into operation on 1 July 2007, if not earlier. The bill replaces the 1 July 2007 date with a new date of 1 July 2009.

The repeal provisions make it clear that the children's Koori Court is a pilot. An evaluation of the children's Koori Court has commenced and will be completed by the proposed new sunset date.

The early indication from the evaluation is that the children's Koori Court has produced valuable justice outcomes for participants and the wider Victorian community.

Given the success of the children's Koori Court sitting at Melbourne, I have announced that Victoria's second children's Koori Court will be operational in Mildura by the end of 2007.

I commend the bill to the house.

Debate adjourned on motion of Mr CLARK (Box Hill).

Debate adjourned until Wednesday, 6 June.

WILLS AMENDMENT BILL

Statement of compatibility

Mr HULLS (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities (the charter), I make this statement of compatibility with respect to the Wills Amendment Bill 2007 (the bill).

In my opinion, the bill, as introduced in the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill amends section 26 of the Wills Act 1997 to make further provision for matters of which the court must be satisfied before granting leave to apply for an order authorising a statutory will to be made or revoked on behalf of a person who does not have testamentary capacity.

The bill provides that the court must be satisfied that the proposed will or revocation reflects what the intentions of the person on whose behalf the will is to be made or revoked would be likely to be, or what the intentions of the person might reasonably be expected to be, if he or she had testamentary capacity.

Human rights issues

1. *Human rights protected by the charter that are relevant to the bill*

The bill does not raise any human rights issues.

2. *Consideration of reasonable limitations — section 7(2)*

As the bill does not raise any human rights issues, it does not limit any human rights and, therefore, it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with, and does not limit, the human rights protected by the charter.

ROB HULLS, MP
Attorney-General

Second reading

Mr HULLS (Attorney-General) — I move:

That this bill be now read a second time.

The Wills Act 1997 sets out the law relating to wills in Victoria.

Since 1997, the act has provided for a statutory will-making scheme. The scheme allows the Supreme Court to authorise the making of a will on behalf of a person who does not have testamentary capacity, while that person is still alive. The act also allows the court to revoke such a will.

The scheme is intended to benefit someone who may have once had capacity to make a will but who has lost that capacity, as well as someone who has never had capacity.

The act currently requires a person applying for authorisation of a statutory will to first obtain leave of the court. Before granting leave, the court must be satisfied that the proposed will accurately reflects the likely intentions of the person on whose behalf it will be made, if that person had testamentary capacity.

Under these provisions, it is very difficult for an application to be brought on behalf of a person who has never had testamentary capacity. This is because their likely intentions cannot be established with the required degree of precision and exactitude. For example, it may be impossible to know the wishes of someone who has a severe intellectual disability or who suffers a brain injury as a young child.

The effect of not being able to make a statutory will is that the person's estate will be distributed according to the rules of intestacy, which essentially means to their living next of kin in accordance with a fixed legal formula.

However, there are cases where the distribution of an estate under the intestacy rules would be unfair or inappropriate. Consider, for example, the situation of a child abandoned by her parents or a family where one parent has not had contact with, or care of, a child since early childhood.

As such, the current provisions of the act are not sufficiently wide to cover all of the cases that they should.

The purpose of the bill before the house today is therefore to amend the act to clarify the basis on which the court may consider applications for a statutory will to be made or revoked on behalf of a person who has never had testamentary capacity.

The bill provides that, before granting leave for such an application, the court must be satisfied that the proposed will or revocation reflects what the intentions of the person on whose behalf the will is to be made or revoked would be likely to be, or what the intentions might reasonably be expected to be, if the person had testamentary capacity.

It is noted that the act already provides that the court may require the applicant for a statutory will to provide an extensive list of information to support their application. This includes any evidence available of:

the wishes of the person;

the circumstances of any person for whom provision might reasonably be expected to be made under the will;

any persons who might be able to claim on intestacy;

any gift for a charitable or other purpose that the person might reasonably be expected to give or make.

This is a small but important bill. It will ensure that appropriate cases are considered by the court and, as always intended, that people who have never had testamentary capacity benefit from the statutory will-making scheme. More broadly, the bill will enhance the rights and dignity of people with disabilities by enabling their property to be distributed appropriately by having regard to their current situation.

The bill has the support of the court and both legal and non-legal probate service providers. I am confident that it will be welcomed by those families and carers of people with disabilities.

I commend the bill to the house.