

DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

Supreme Court Civil Procedure Amendment Bill 2018

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Madam Speaker, I move that the Bill be read a second time.

This Bill makes amendments to the Supreme Court Civil Procedure Act 1932 to update the Act and address anomalies and deficiencies identified by the Supreme Court of Tasmania.

The amendments will address anomalies in the legislation that prevent judges from making and amending rules in relation to the admiralty jurisdiction of the Supreme Court; provide judges of the Supreme Court with the power to award pre-judgment interest when making a judgment that requires the payment of an amount of money; provide for representative proceedings in Tasmania; and enable the Associate Judge to exercise new powers to deal with applications in relation to pending appeals.

Section 197 of the Act empowers the judges of the Supreme Court to make Rules of Court for various purposes related to regulating and implementing the Act. The Rules of Court are primarily contained in the Supreme Court Rules 2000, however certain parts of the former Rules of the Supreme Court 1965 were retained after the Supreme Court Rules 2000 commenced and those parts continue to apply.

Practice and procedure in admiralty in Tasmania is governed by the Commonwealth Admiralty Act 1988 and Admiralty Rules 1988, and the Tasmanian Supreme Court Rules 2000, to the extent that they are not inconsistent with the Commonwealth legislation. Rules of the Tasmanian Supreme Court relating to admiralty are currently contained in the Tasmanian Admiralty Rules, one of the retained parts of the former Rules of the Supreme Court 1965.

The Supreme Court Civil Procedure Act 1932 still contains references to the repealed Colonial Courts of Admiralty Act 1890 (UK) and has not been updated to refer to the 1988 Commonwealth legislation that replaced it. This means that the Tasmanian Admiralty Rules cannot currently be amended through the usual power granted to judges under the section 197 of the Act.

This Bill updates the Act so that it correctly refers to the contemporary Commonwealth legislation that governs admiralty practice and procedure and repeals redundant references to legislation that no longer applies. This will enable judges of the Supreme Court to amend the Admiralty Rules where required.

The Bill also inserts a new section 35A into the Act to provide judges of the Supreme Court with the power to award pre-judgment interest when making a judgment that requires the payment of an amount of money. Pre-judgment interest is interest on a sum

of money that a court may order a defendant in legal proceedings to pay to the plaintiff in respect of a period prior to judgment.

While there is a general rule at common law that pre-judgment interest may not be awarded, judges of the Supreme Court of Tasmania currently have limited powers to do so in certain circumstances through a small number of legislated exceptions.

However, a general and unrestricted power to award pre-judgment interest in actions for the recovery of money or damages exists in all other Australian jurisdictions, for example under the Federal Court of Australia Act 1976 (Cth). Tasmanian magistrates already have such a power under section 25(1) of the Magistrates Court (Civil Division) Act 1992 and for Tasmanian arbitrators the power is conferred under section 33E of the Commercial Arbitration Act 2011.

This Bill will provide Tasmania's judges with a comparable power, modelled on those currently available to Tasmanian magistrates and arbitrators.

The Bill also inserts a new Part into the Act to provide for representative proceedings in Tasmania, otherwise referred to as class actions. The purpose of these amendments is to clarify the procedural requirements for litigants in representative proceedings, facilitate access to justice, create efficiency for the Court and parties, reduce litigation expenses for individuals and protect defendants from multiple suits.

The new Part VII will provide for representative proceedings to commence and proceed where seven or more persons have claims against the same defendant, those claims are in respect of the same, similar or related circumstances and they give rise to a substantial common question of law or fact.

The new sections contained in Part VII will cover matters such as: the conditions that apply to the commencement of representative proceedings; who has standing; who may be a member of a group of persons on whose behalf representative proceedings have been commenced; group members opting out of proceedings or new members being added to the group; discontinuance of proceedings; the determination of questions that may relate to only one or some members of the group; the awarding of damages and the establishment of funds to distribute money to group members; provisions relating to appeals; and the effect of representative proceedings upon limitation periods for individuals.

These new provisions have been largely modelled on those contained in Part 10 of the Civil Procedure Act 2005 of New South Wales.

The final matter that this Bill deals with is the powers of the Associate Judge in relation to pending appeals.

Section 197(1)(f) enables the judges of the Supreme Court to make rules that empower the Associate Judge to exercise certain powers of the Court. As it currently operates, that subsection contains a broad prohibition on the Associate Judge dealing with any proceedings in the court's appellate jurisdiction other than a review of a taxation of costs by an officer of the Court.

The amendment in this Bill will enable the judges of the Supreme Court to extend the Associate Judge's powers to include hearing applications in relation to pending appeals. This may include, for example, applications for extensions of time, applications for pre-hearing directions and applications for appeals to be struck out for want of prosecution.

Such powers would be the same as those exercised by a single judge in relation to pending appeals. However, the Associate Judge will not have the power to hear and determine appeals or to sit on the Full Court.

Madam Speaker, I would like to take this opportunity to thank the Chief Justice of the Supreme Court of Tasmania, the Honourable Alan Blow AO, who raised several of these matters with me and with the former Attorney-General, Dr Vanessa Goodwin, on behalf of his fellow judges. The amendments contained in this Bill will lead to improved practice in civil procedure matters in the Supreme Court of Tasmania, and I commend the Bill to the House.