




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

Record of Proceedings, 7 May 2015

MAGISTRATES AMENDMENT BILL

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (11.28 am): I present a bill for an act to amend the Magistrates Act 1991 for particular purposes. I table the bill and explanatory notes.

Tabled paper: Magistrates Amendment Bill 2015 [\[383\]](#).

Tabled paper: Magistrates Amendment Bill 2015, explanatory notes [\[384\]](#).

I rise to introduce the Magistrates Amendment Bill 2015. The amendments in the bill are necessary to address administrative oversights that have occurred in the swearing in of persons as magistrates, acting magistrates and acting judicial registrars—the relevant judicial officers—during the period from and including 12 April 2013 to and including 24 April 2015—the relevant period. The relevant judicial officers have taken and subscribed an incorrect oath or affirmation. The government was informed of this administrative oversight late last week and has acted quickly to remedy the situation.

In addition, the government understands at least one of the acting magistrates may not have taken and subscribed an oath or affirmation following their appointment. Section 9(1) of the Magistrates Act provides that a person appointed as a magistrate or acting magistrate must not exercise the functions or powers of a magistrate unless the person has taken and subscribed the oath or affirmation prescribed by the regulation. Section 53F(1) is in similar terms and applies to persons appointed as a judicial registrar or acting judicial registrar of the Magistrates Court.

The Magistrates Regulation 2013 commenced on 12 April 2013. Sections 2 and 3 of the regulation respectively set out the form of oath or affirmation required under sections 9(1) and 53F(1) of the Magistrates Act, the 2013 oath and the 2013 affirmation. However, the government understands the oath or affirmation that was administered to each of the relevant judicial officers during the relevant period was the oath or affirmation prescribed under the repealed Magistrates Regulation 2003. The effect of taking and subscribing the incorrect oath or affirmation, or not taking and subscribing an oath or affirmation at all, is that under section 9(1) and 53F(1) of the Magistrates Act those judicial officers would be prevented from exercising any of their powers and functions as a magistrate, acting magistrate or acting judicial registrar, as the case may be.

Further, the oversight potentially affects the continuing validity of the appointment of the relevant judicial officers. Section 9(3) of the act provides that if a person appointed as a magistrate or acting magistrate does not take the oath or affirmation mentioned in section 9(1) within three months after being appointed, the person ceases to hold office at the end of the three-month period. Section 53F(3) makes a similar provision for persons appointed as judicial registrars or acting judicial registrars.

This bill will remedy the situation by providing that the 2003 oath and the 2003 affirmation that was made and subscribed by the relevant judicial officers during the relevant period will be taken to

be as effective as if the relevant judicial officer had taken the 2013 oath or made the 2013 affirmation—that is, the correct oath or affirmation. The bill declares the relevant judicial officers' exercise of powers or functions is or was and always has been as valid as it would be if the relevant judicial officers had taken the 2013 oath or made the 2013 affirmation instead of the 2003 oath or 2003 affirmation. Similarly, the bill includes an amendment to validate the appointment of a magistrate or acting magistrate who has failed to take and subscribe an oath or affirmation and to declare that the magistrate's exercise of powers or functions is or was and always has been as valid as it would be if the oath or affirmation had been taken and subscribed.

However, the bill requires a magistrate or acting magistrate who has failed to take an oath or affirmation as required by the act to do so within three months of commencement of the validating amendment in the bill. If the magistrate or acting magistrate does not or cannot take the required oath or affirmation within three months of the commencement, he or she will cease to hold office. The validating provisions in the bill will operate retrospectively, but this is unavoidable in the circumstances. The government is of the view that the administration of the incorrect form of oath or affirmation or failing to take an oath has no effect on the legal correctness of judgements and orders made by the judicial officers and, without retrospective remedial legislation, there is a serious risk of expensive and inconvenient disruption for parties who have ordered their affairs based on those judgements and orders.

This morning I have briefed the Speaker, the opposition and members of Katter's Australian Party and I thank them for the constructive discussions that we have had. I will endeavour to speak to the member for Cook so that I can ensure I have spoken to all crossbench members in relation to this important bill. I am happy to speak further to any members of the parliament if they have any questions. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (11.35 am): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Declared Urgent; Allocation of Time Limit Order

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (11.35 am), by leave, without notice: I move—

That under the provisions of Standing order 137 the Magistrates Amendment Bill be declared an urgent bill and pass all remaining stages on this sitting day.

Question put—That the motion be agreed to.

Motion agreed to.

Madam DEPUTY SPEAKER (Ms Grace): Order! In accordance with the motion agreed to, the bill is now set down for the second reading to be moved later today.