**FENCES ACT AMENDMENT BILL 1990**

**Legislative Council, 7 August 1990, pages 35-6**

Second reading

**The Hon. C.J. SUMNER (Attorney-General)** obtained leave and introduced a Bill for an Act to amend the Fences Act 1975. Read a first time.

The Hon. C.J. SUMNER: I move: That this Bill be now read a second time.

As this Bill is identical to one that was introduced in the last session, I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

Explanation of Bill

This Bill amends the Fences Act 1975 (‘the Act’) by dealing with the jurisdictional limits of courts concerned with fencing matters and by enabling a court of appeal to amend its original order to allow for any increase in fencing costs that occur during the period a decision was under appeal.

Section 13 of the Act sets out the jurisdictional limits of courts dealing with fencing matters. The pecuniary amounts set out in section 13 were originally linked to the normal jurisdictional limits in the local court. However, an amendment to the Local and District Criminal Courts Act has increased the monetary limits of the small claims jurisdiction and the local court of limited jurisdiction. The proposed amendment will ensure consistency between the Acts.

The second amendment has been suggested by the Senior Judge. The Senior Judge has indicated that possible injustices can occur where an appeal is instituted against a court’s determination on a fencing matter. As a result of the time delays associated with an appeal, by the time the original decision of the court is confirmed by an appeal court, the fencing contractor may not be prepared to do the work for the amount originally quoted.

The current provisions of the Act do not allow a court to vary the original order to reflect any increase in contract price which may occur as a result of the appeal process. The Senior Judge has suggested that an amendment be made to the Act to enable a court to vary the original order in this manner.

The Government agrees that currently difficulties could arise in some cases where, due to the time involved in the appeal process, the original court order cannot be put into effect. Many of the potential difficulties will be avoided by the amendment to the Act to allow the court of appeal to vary the original order. I commend this Bill to honourable members.

Clauses 1 and 2 are formal. Clause 3 inserts a new section after section 12. The new section empowers an appellate court to vary any determination as to the cost of fencing work to take account of any variations in the cost subsequent to the determination appealed against.

Clause 4 substitutes section 13 which deals with the jurisdiction of the local court under the Act. The substituted section provides that a local court of full jurisdiction has jurisdiction over proceedings involving a monetary claim exceeding the jurisdictional limits of local courts of limited jurisdiction. A local court of limited jurisdiction has jurisdiction over all other proceedings under the Act. The current section is to the same effect but refers to the specific amounts that constituted the jurisdictional limits at the time of the latest amendment to the Act in 1983. The current section also provides for small claims under the Act. Small claims can be provided for by ministerial notice under the Local and District Criminal Courts Act 1926.

The Hon. K.T. GRIFFIN secured the adjournment of the debate.