NSW Legislative Assembly Hansard

Legal Profession Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 7 December 2004.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [4.02 p.m.]: I move:

That this bill be now read a second time.

The Legal Profession Bill repeals and replaces the current Legal Profession Act 1987. It represents a major milestone in achieving consistency and uniformity in the regulation of the Australian legal profession. It will also make it easier for lawyers to practise across State and Territory borders. The mosaic of State and Territory-based regulatory regimes for the legal profession currently imposes unreasonable burdens on practitioners who want to practise interstate. Also, consumer interests are not served by differences that interfere with efficient business practices. To address this, at the instigation of New South Wales in July 2001, the Standing Committee of Attorneys-General [SCAG] agreed to develop model laws to facilitate legal practice across State and Territory jurisdictions. The standing committee worked closely with the Law Council of Australia in developing model legal profession provisions, and I wish to thank the Law Council for its substantial contribution.

A consultation version of the model provisions was released in 2003 to more than 100 stakeholders. These included professional associations for legal practitioners, regulatory authorities, consumer organisations, and heads of courts and tribunals. The model provisions were finalised and endorsed by Standing Committee of Attorneys-General Ministers in August 2003. In July this year all Australian Attorneys General signed the Legal Profession Memorandum of Understanding, and each State and Territory agreed to use its best endeavours to implement legislation to give effect to the model provisions. The memorandum of understanding also establishes a joint working party with representatives from each State and Territory, the Commonwealth and the legal profession. The joint working group provides regular advice to SCAG on the implementation, operation and maintenance of the provisions. This national joint working party is the appropriate body to initially consider the concerns of any individual or group about the national model provisions.

The working party is currently considering a number of proposed amendments to the model provisions. Some of these were agreed to by the Standing Committee of Attorneys-General earlier this month and have been incorporated into this bill. Others are still under consideration. This bill is the culmination of many years of hard work and co-operation across all jurisdictions. However, it is inevitable that from time to time it will need to be amended as the national model provisions are revised and amended. Facilitating legal practice across State and Territory boundaries will be an ongoing project. In preparing this bill, which adopts the national model provisions for New South Wales, there has been extensive consultation with the Law Society, the Bar Association, the Legal Services Commissioner, the Legal Profession Advisory Board and the Administrative Decisions Tribunal. I would like to thank these bodies for their contributions, which have been significant and invaluable.

The result is a bill that removes barriers to legal practitioners practising across State and Territory borders. A legal practitioner admitted in New South Wales will now be able to practise in any Australian jurisdiction without the need to also be admitted in that jurisdiction. A client in Victoria will have the same rights and remedies as a client in New South Wales. Disciplinary action taken against a practitioner in New South Wales can be enforced in Queensland. This bill will commence on proclamation and will be proclaimed when the regulatory and other authorities affected by the amendments have had time to establish the new processes and procedures that will be required.

Chapter 1 of the bill sets out the definitions used throughout the bill. There are some changes to terms used in the Legal Profession Act 1987, developed to facilitate national practice. Some terms denote local, interstate and international practitioners. For instance, under the bill, once admitted a person becomes an "Australian lawyer". If admitted in New South Wales the person is a "local lawyer". If admitted in another Australian jurisdiction a person is an "interstate lawyer". If the person holds a practising certificate, that person is a "legal practitioner". An "Australian legal practitioner" is a person holding a practising certificate issued by an Australian jurisdiction. A "local legal practitioner" is a person holding a practising certificate issued in New South Wales.

An "interstate legal practitioner" is a person with a practising certificate issued in another State or Territory. A "law practice" is an entity entitled to engage in legal practice, which includes an Australian legal practitioner in sole practice, a law firm, a multidisciplinary partnership, an incorporated legal practice and a community legal centre. The bill also uses the term "legal practitioner associate". This term covers partners, directors, employees and others behind the practice, who are legal practitioners. It does not include lay directors, partners or employees. The term "principal of a law practice" includes a sole practitioner, a partner or a legal practitioner director of a law practice. Clause 8 defines the "home jurisdiction" of a legal practitioner as the jurisdiction where the practitioner's practising certificate was granted.

I turn now to Chapter 2 of the bill. Part 2.2 reserves legal work and titles for practitioners. This reservation protects the public and clients by ensuring legal work is carried out only by people properly qualified to do so. This part ensures there is a textually uniform prohibition across Australia restricting unqualified people from engaging in legal practice or representing they are entitled to engage in legal practice. Clause 14 makes it an offence for any person to engage in legal practice for fee, gain or reward, unless that person is an Australian legal practitioner. This does not prevent registered foreign lawyers

or community legal centres from engaging in legal practice, nor does it prevent licensed conveyancers from doing conveyancing. If an unqualified person engages in legal practice in breach of this clause, that person is unable to recover any money for his or her work.

The term "engaging in legal practice" is not defined and has deliberately been left to the common law. However, I do not expect this definition to limit in any way the current reservation of legal work for practitioners. I intend to ensure that only qualified people can provide legal services to the public. This common law approach has the benefit of remaining flexible and allows the development of common jurisprudence on what constitutes legal practice throughout Australia. Clause 15 prohibits an unqualified person from representing or advertising that he or she is entitled to engage in legal practice.

Clause 16 provides that only qualified people may use the following titles: lawyer, legal practitioner, barrister, solicitor, attorney, counsel, Queen's Counsel, King's Counsel, Her Majesty's Counsel, His Majesty's Counsel and Senior Counsel. This will ensure the public can identify people who are qualified legal practitioners and who are subject to the legal profession regulatory scheme and ethical standards. Part 2.3 sets out the process and requirements for admitting people to the legal profession. This part is designed to work with similar provisions in other jurisdictions to ensure equivalent qualifications and training requirements are recognised throughout Australia. The part also ensures that only applicants with appropriate academic and practical qualifications and who are fit and proper persons can be admitted to the legal profession. This part is similar to part 2 of the Legal Profession Act 1987.

Under clause 31 the Supreme Court may admit an applicant for admission as a local lawyer if the Admission Board certifies the applicant is eligible for admission and is a fit and proper person. Under clause 25 the Admission Board must consider each specified suitability matter and any other relevant matter. The suitability matters are set out in clause 9 and include whether the person is of good fame and character, whether the person has been insolvent under administration, and any previous convictions. Clause 26 states that persons may apply to the Admission Board for an early determination of their suitability.

Clause 27 allows the Admission Board to refer the determination of whether a person is fit and proper to the Supreme Court. If the Admission Board refuses to certify that a person is eligible for admission, the candidate may appeal to the Supreme Court under clause 28. Division 4 of part 2.3 sets out the powers and role of the Legal Profession Admission Board, presently the Legal Practitioners Admission Board. Under clause 38 the board's power to make admission rules is retained. This allows the board to specify how and when applications should be made. Rules may also be made about admission requirements for academic qualifications and practical legal training and their assessment; the disclosure of matters that may affect the eligibility of an applicant; and applications under the trans-Tasman mutual recognition legislative scheme.

Part 2.4 of the bill establishes the processes for granting and renewing practising certificates. The relevant model provisions ensure that practitioners will apply for a practising certificate in their principal place of practice; a jurisdiction will permit legal practitioners holding an interstate practising certificate to practise in that jurisdiction; interstate lawyers will be officers of the Supreme Court of any jurisdiction they practise in; each jurisdiction will recognise conditions on practice imposed on interstate legal practitioners in their home jurisdictions—for example, as a result of disciplinary action—practising certificates will be issued on the basis of admission in any State or Territory; and government lawyers whose home jurisdiction does not require that they have practising certificates will be able to practise in other jurisdictions.

Practising certificates ensure that those lawyers wishing to practice as a solicitor or barrister are covered by appropriate insurance and the Fidelity Fund. Practising certificates also provide an easy mechanism for suspending or revoking a practitioner's right to practise. In New South Wales, practising certificates can be issued only by the Bar Association or the Law Society. A lawyer holding a certificate from the Bar Association is entitled to practise as a barrister and a lawyer holding a certificate from the Law Society is entitled to practise as a barrister and solicitor. A lawyer may only hold one practising certificate at a time. The process for granting and renewing local practising certificates is contained in part 2.4, division 4. A person admitted as a lawyer in any Australian jurisdiction will be able to apply for a practising certificate in New South Wales. Similarly, lawyers admitted in New South Wales will be able to apply for a practising certificate in any other jurisdiction. This new system will replace that created by the Mutual Recognition Acts in each State and Territory.

Clause 45 provides for when a lawyer must apply for a practising certificate in New South Wales. This is an important provision under the model law scheme. Generally, a lawyer must apply for a practising certificate in New South Wales if he or she principally engages in legal practice in New South Wales. Other provisions set out where a lawyer can apply for a practising certificate when this is unknown, or when the lawyer is only temporarily engaging in legal practice principally in another jurisdiction. An applicant for a practising certificate must disclose matters which affect their eligibility or status as a fit and proper person to hold a practising certificate. Clause 42 specifies various matters which may be taken into account in determining if a person is fit and proper to hold a practising certificate.

These grounds include any suitability matter and whether the person has previously obtained a practising certificate with misleading information; whether the person has contravened the Act, regulation or legal profession rules, or any corresponding legislation; and whether the person has contravened a condition on their practising certificate or an order of the tribunal or corresponding disciplinary body. Clause 48 provides that the Law Society Council or Bar Council may grant, renew or refuse to grant a practising certificate. In granting a certificate the council may also impose conditions on the certificate limiting the type of practice that can be undertaken by the legal practitioner. The council can only grant or renew a practising certificate if satisfied the person is eligible and is a fit and proper person to hold the certificate.

Division 5 deals with the conditions that a council may place on a practising certificate. Conditions must be reasonable and relevant. Some possible conditions include requiring the holder to undertake continuing legal education, or an academic or training course, or a period of supervised practice. Clause 51 gives a specific power to impose conditions on a certificate

when a local legal practitioner has been charged with a criminal offence, but the charge has not been determined. Clause 52 specifies that where an Australian legal practitioner practises in New South Wales, their New South Wales practice is subject to any condition imposed on their admission to the legal profession, no matter which State or Territory they were admitted in. This facilitates national practice by ensuring that conditions are consistent and consumers are protected. Clauses 53, 54 and 55 specify statutory conditions that barristers and solicitors must comply with. For instance, the requirements that a barrister must be a sole practitioner and cannot be in partnership or employment are maintained.

Clause 56 specifies that the Bar Council can impose conditions requiring the holder of a certificate to complete a barrister's reading program or requiring the practitioner to read with a barrister for a period of time. A new subprovision allows the Bar Council to suspend or cancel the practising certificate of a practitioner who does not comply with these conditions. A contravention of any condition imposed on the certificate is capable of being unsatisfactory professional conduct or professional misconduct. The contravention may also attract a fine of 100 penalty units. Division 6 of part 2.4 of the bill sets out the process for amending, suspending or cancelling a local practising certificate. Under clause 60 this can be done where the practitioner is no longer a fit and proper person to hold the certificate; the practitioner no longer has appropriate insurance or fails to pay a contribution; and the practitioner breaches a condition of his or her certificate.

Division 7 retains the provisions that require legal practitioners who become bankrupt or are convicted of a serious offence or tax offence to show cause or provide details about this and explain why, despite the show-cause event, they are fit and proper persons to hold a practising certificate. This division ensures New South Wales regulatory bodies can take swift action against practitioners who fall into these categories. Under clause 66 the show-cause process also applies to those persons applying for a practising certificate. Where applicants have been convicted of a tax offence or have been bankrupt, they must provide a written statement to the council explaining why they consider themselves to be fit and proper persons to hold a practising certificate. After receiving the statement, the council may decide to refuse to issue the certificate. The present holder of a practising certificate must give the appropriate council a notice that the show-cause event happened, and a written statement explaining why the person considers himself or herself to be a fit and proper person.

After receiving the statement, the council may decide to cancel or suspend the holder's certificate. Clause 72 states that if the council determines that a holder is not a fit and proper person to hold a certificate, the council must either refuse to grant the certificate or institute proceedings in the tribunal for unsatisfactory professional conduct or professional misconduct. If a condition is imposed under this division and the holder does not comply, clause 73 provides that the holder is guilty of professional misconduct and the appropriate authority may suspend or cancel the local practising certificate. Under clause 74, if the council refuses to grant the practising certificate under this division, the applicant is not entitled to reapply for a specified period not exceeding five years. An applicant who is dissatisfied with a decision of the council or commissioner under this division may appeal to the tribunal. Where a person appeals against the decision, the person bears the onus of establishing that he or she is a fit and proper person to hold a practising certificate.

I turn to division 8. Under clause 78 a council may immediately suspend a practising certificate where it is in the public interest to do so on any of the grounds specified for divisions 6 and 7. Clause 79 allows the holder to surrender his or her practising certificate and allows the council to cancel it. Under clause 80 the council may give a notice to a holder requesting the certificate be returned. Failure to comply with the notice is an offence. I turn now to division 9. Other existing provisions in the Legal Profession Act 1987 are included in the bill. Clause 85 allows the regulations to make provision for regulating and prohibiting the marketing of legal services, including advertising personal injury services. The provision giving solicitors audience rights before the courts and allowing them to be advocates is maintained in clause 87.

Division 10 retains the provisions relating to the fees payable for the grant or renewal of a practising certificate. Division 11 deals with interstate practitioners practising in New South Wales. The adoption by all States and Territories of the national model provisions will ensure that all Australian practitioners can practise throughout the country regardless of where their practising certificate was issued. Clause 98 retains a current requirement that when an interstate legal practitioner establishes an office in New South Wales they must hold appropriate professional indemnity insurance. Clause 100 states that an interstate legal practitioner is not authorised to engage in legal practice in this jurisdiction to a greater extent than a local legal practitioner could be authorised under a local practising certificate. This ensures that New South Wales restrictions on practitioners also apply to those holding interstate practising certificates.

Under division 12 the councils will be able to enter into protocols with interstate regulatory authorities about matters relevant to the issue of where a lawyer should obtain a practising certificate. Clause 106 states that a council must keep a register of the names of Australian lawyers to whom it grants practising certificates. The conditions on practising certificates must also be kept in the register. Other provisions deal with specific government offices or positions. In some other Australian jurisdictions government lawyers will not be required to hold practising certificates. Clause 114 allows these lawyers to practise in New South Wales while working for their Government without being required to take out a New South Wales practising certificate.

I turn to part 2.5, which contains interjurisdictional provisions regarding practising certificates and provides for notification action to be taken by courts and other authorities in relation to the admission of people to the legal profession and their right to engage in legal practice in Australia. For instance, when an applicant makes an application for admission the Admission Board may inform other jurisdictions of that application. Under division 3, a local lawyer must notify the local council and prothonotary if their name is removed from an interstate roll or if an order is made that their name be removed from a roll. They must also notify the local council if certain orders are made interstate, for example, if an order is made recommending that their New South Wales practising certificate be cancelled or suspended.

Finally, they must notify the local council and prothonotary if any foreign regulatory action is taken against them. The local councils and prothonotary must take action when they receive such a notice. If a lawyer is removed from an interstate roll the prothonotary must also remove the practitioner's name from the local roll and the council must cancel their practising

certificate, unless there is a court order to the contrary. When foreign regulatory action is taken against the practitioner the appropriate authority may issue a show cause notice asking the lawyer why their name should not be removed from the New South Wales roll.

I turn now to part 2.6, which concerns incorporated legal practices and multi-disciplinary practices. All States and Territories, either presently or previously, restricted the ability of legal practitioners to share profits with non-practitioners. These restrictions were intended to ensure that legal practitioners adhered to legal professional obligations and duties to consumers and courts. National competition policy reviews by New South Wales, Western Australia and Tasmania recommended relaxing the restrictions on the sharing of profits and allowing incorporated legal practices and multi-disciplinary partnerships. In late 1999 New South Wales removed restrictions on profit sharing in multi-disciplinary partnerships, and in July 2001 it also permitted incorporated legal practices.

However, differences in legislation around Australia allowing incorporated legal practices and multi-disciplinary partnerships restrict the use of these entities. The objective of the model provisions is to establish uniform provisions in all jurisdictions, ensuring that incorporated legal practices and multi-disciplinary partnerships can practise across State and Territory borders with ease. Part 13 adopts the national model provisions relating to incorporated legal practices and multi-disciplinary partnerships and strengthens the regulatory requirements to ensure that clients' rights are protected and that professional obligations on legal practitioners are not affected by the business structures. An incorporated legal practice must have at least one director who is a legal practitioner. Before carrying on business the corporation must notify the Law Society that it intends to provide legal services.

As corporations are separate legal entities at law, clause 143 ensures that legal practitioner employees of the practice cannot use the corporation to shield themselves from liability. The clause specifies that any breach by them of a professional obligation can amount to unsatisfactory professional conduct or professional misconduct. Clause 144 ensures that all insurable solicitors in an incorporated legal practice have appropriate professional indemnity insurance. Under clause 146, an incorporated legal practice that provides legal and non-legal services must inform its clients of which services are being provided by legal practitioners and which are not. This is to ensure that their clients are fully informed and not acting under a misapprehension about who is providing the services. The Law Society Council may apply to the Supreme Court to ban a corporation from providing legal services under clause 153. Directors can be banned from managing incorporated legal practices under clause 154.

Multi-disciplinary partnerships are partnerships that provide legal and non-legal services. Similar to an incorporated legal practice, a multi-disciplinary partnership must give the Law Society notice that it intends to provide legal services. When a partnership has legal and non-legal partners clause 168 specifies that the legal partners are responsible for the management of the legal services provided. Clause 171 specifies that a legal practitioner employee in a multi-disciplinary partnership must maintain the professional standards that apply to other practitioners. The national model provisions provide a system for registering foreign lawyers.

I turn now to part 2.7, which relates to legal practise by foreign lawyers. The national model provisions provide a system for registering foreign lawyers. The scheme operating in most jurisdictions requires a foreign lawyer to register in each jurisdiction where they practise. However, the national model provisions will allow registration in one jurisdiction to be recognised in other jurisdictions. The provisions in the bill are otherwise similar to the existing provisions in the Legal Profession Act 1987 in relation to foreign lawyers. Presently, New South Wales has 14 foreign lawyers registered with the Law Society. Part 2.8 concerns community legal centres. Clause 240 adopts the present section 48H of the Legal Profession Act. This requires community legal centres to comply with certain provisions allowing them to provide legal services.

I turn to chapter 3, which concerns the conduct of legal practice. Part 3.1 sets out requirements and procedures for legal practitioner trust accounts. This part is crucial to the uniform legal profession scheme. Currently, different trust account requirements operate in each jurisdiction. One of the aims of the model laws project was to set similar trust account requirements in all jurisdictions, thus reducing compliance costs. Under clause 244, money entrusted to a legal practice for, or in connection with, financial services is excluded from part 3.1. This money is protected by the Financial Services Licence Scheme operated by the Commonwealth.

Part 3.1 generally requires that all trust money received by a legal practice in New South Wales be put into a New South Wales trust account. Sometimes it may be difficult to determine the jurisdiction where the trust money is received. This may be because the client is resident in one jurisdiction while the services are performed in another, or two different offices of a law practice are involved. To assist with this issue, clause 247 allows the Law Society Council to enter into protocols with authorities in other jurisdictions to determine where trust funds were received. Clause 252 specifically excludes barristers from holding money on behalf of other persons. However, the regulations may specify situations where barristers can hold trust funds. Under division 3, the Law Society Council may appoint an investigator to a law practice. This appointment may authorise the investigator to investigate a particular allegation or matter, or allow for the investigation of trust accounts on a general or regular basis.

Once the investigation is complete an investigator's report must be submitted to the Law Society Council. Under clause 272 the Law Society can accredit people to be external examiners, who examine the records of a trust account. Under clause 274 a law practice must have its trust account examined by an external examiner at least once a year. The external examinations ensure that trust accounts are kept in accordance with the legislation, and also assist the Law Society in identifying any discrepancies in the account. The bill retains the Public Purpose Fund, which is made up of interest earned on the statutory deposits under division 6. The Public Purpose Fund is applied for the payment of various costs and expenses set out in clause 290, including the costs of regulatory action under the bill. Discretionary payments may also be made from the fund to assist legal aid, the fidelity fund and the Law and Justice Foundation. The current trustees of the

Public Purpose Fund will be maintained.

I turn to part 3.2, which concerns cost disclosure and assessment. Presently, cost disclosure and review requirements differ throughout Australia. Sometimes they are in legislation or, in other cases, in the professional associations' practice rules. Inconsistencies in costs disclosure requirements cause practical difficulties. For example, two or more separate costs disclosures may be required for the one matter. A disclosure complying with the requirements of one jurisdiction may not meet the requirements of another. Uniformity will ensure that consumers receive a single set of costs information. The national model provisions relating to legal costs ensure there are the same requirements in relation to cost disclosure and similar principles for cost assessment, but with each jurisdiction retaining its own structures and processes for cost assessment.

Part 3.2 sets outs the requirements in relation to costs disclosure and assessment. This includes what must be included in a cost disclosure statement, billing, and having legal fees assessed. Generally, the provisions in the bill apply if a client first instructs the law practice in the matter in New South Wales. When the client first instructs the practice, the law practice must give the client a cost disclosure statement detailing the information specified in clause 309 (1). This includes an estimate of the total costs, an estimate of the amount the client will be able to recover and how the costs can be assessed. There are certain exceptions from the requirement to disclose as outlined in clause 312. These include a client who has already received a disclosure notice and who has waived further disclosure, a public company and the holder of a financial services licence. As a general rule a client will not be required to pay legal costs in respect of matters that have not been disclosed unless the costs have been assessed under division 11.

In addition to the disclosure statement, a law practice can enter into a costs agreement with the client. The cost agreement is a binding, written contract detailing how costs will be charged and billed. A costs agreement may be enforced as a contract and can be reviewed under this part. The agreement may be set aside under clause 328 if the agreement is not fair, just or reasonable. The law practice cannot recover its costs from the client until the bill has been given. The bill can either specify a lump sum or itemise the individual costs involved. The current provisions in the New South Wales Act dealing with maximum costs in personal injury damages matters, and costs in civil claims where there is no reasonable prospect of success have been retained in divisions 9 and 10. These provisions directly replicate sections 198C to 198N of the Legal Profession Act 1987.

Costs billed by a law practice can be assessed under division 11. When assessing the bill, a cost assessor must consider the criteria for assessment listed in clause 363. This includes whether the legal work was necessary, carried out in a reasonable manner and whether the fees charged were fair and reasonable. Cost assessors may also assess party-party costs following a court or tribunal award of costs. Once the cost assessor has reviewed the fees, the cost assessor must make a determination under clause 367 and issue a certificate. Once the certificate is filed in a court with the relevant jurisdiction the certificate becomes a judgment of that court. If either party to the assessment is dissatisfied with the cost assessor's determination, this may be reviewed by a cost assessment panel.

The panel consists of two cost assessor members and reviews the determination made by the original cost assessor. After reviewing the fees, the certificate, and any relevant material, the panel can make a new determination and issue a certificate under clauses 377 and 378. An appeal to the Supreme Court is available under clause 384. The Supreme Court can either make a new determination or remit its decision to the cost assessor for determination. If a cost assessor considers the costs charged by the law practice are excessive, the cost assessor can refer the claim to the Legal Services Commissioner.

I turn now to part 3.3, which relates to professional indemnity insurance. A subcommittee of the national legal profession joint working group is investigating whether a national indemnity insurance scheme is feasible. This is still continuing. Therefore, this bill maintains the present New South Wales provisions for professional indemnity insurance. The Legal Profession Act 1987 has provisions dealing with claims against solicitors relating to HIH Insurance. These provisions are now little used, but will be retained in a schedule to the bill.

Part 3.4 concerns fidelity cover. Fidelity funds meet claims by consumers who have suffered financial loss due to a legal practitioner's dishonest default in failing to pay or deliver money, or through a fraudulent dealing with trust property. The model provisions ensure greater consistency across Australia in relation to the claims that can be made on fidelity funds, ensuring consumer rights do not differ between jurisdictions. The model provisions also clarify which fund is liable for claims with an interstate element, and include interjurisdictional provisions to facilitate co-operation between interstate authorities on the investigation of defaults. Under part 3.4 solicitors are required to pay a contribution to the fidelity fund when applying for a practising certificate. Additionally, interstate legal practitioners who become eligible to withdraw money from a New South Wales trust fund must also pay a contribution.

The New South Wales Fidelity Fund is only available for defaults occurring in New South Wales. Therefore, clause 433 determines the "relevant jurisdiction" where a default occurs. Generally this will be determined by the location of the funds and the person authorised to withdraw the funds. Given that funds associated with financial services are excluded from the trust provisions of the bill, clause 435 also prohibits clients claiming on the fidelity fund for claims relating to financial services. This is because financial services funds are regulated by the Commonwealth Government.

Division 9 of part 3.4 gives the Law Society Council the ability to deal with interstate regulators when a claim against the fidelity fund occurs partly in New South Wales and partly in another jurisdiction. Clause 462 gives the Law Society Council the power to enter into formal protocols with interstate regulators to share information about claims, and investigate claims across jurisdictional borders. Part 3.5 deals with mortgage practices and managed investment schemes. This part adopts the current provisions from section 115 to section 122M of the Legal Profession Act 1987 regulating a practitioner's ability to carry on a mortgage practice or managed investment scheme.

Chapter 4 of the bill concerns complaints and discipline and adopts the national model provisions relating to complaints and discipline. These will achieve greater uniformity in standards applied by regulators and courts across Australia to determine when a practitioner's right to practise should be removed or restricted. They will also ensure that the rights afforded to complainants are broadly comparable across jurisdictions. In particular, the bill adopts the definitions of unsatisfactory professional conduct and professional misconduct from the national model provisions, ensuring that they will be the same across Australia.

Chapter 4 also facilitates the mutual recognition of disciplinary action, co-operation between regulators, and the exchange of information concerning complaints. This chapter draws from both the national model provisions and the relevant provisions of the current Act. It also implements a number of amendments to the current provisions, including certain amendments proposed by the Law Reform Commission in Report 99, "Complaints Against Lawyers: An Interim Report", dated April 2001 and the Attorney General's Department's "Further Review of Complaints Against Lawyers" in November 2002. Other proposals came from the legal profession regulators.

Professional misconduct is defined in clause 497 as conduct that involves a substantial or consistent failure to reach or maintain a reasonable standard of competence or diligence occurring in the practice of law. Unsatisfactory professional conduct is the lesser offence, and is defined in clause 496 as conduct occurring in connection with the practice of law that falls short of the standard of competence and diligence that a member of the profession is entitled to expect from a reasonably competent legal practitioner. Clause 498 sets out certain types of conduct that are capable of being unsatisfactory professional conduct or professional misconduct and these include serious offences, tax offences and offences involving dishonesty. The chapter applies to Australian legal practitioners, Australian lawyers, both current and former, and current and former Australian registered foreign lawyers.

Clause 562 specifies that the Administrative Decisions Tribunal can make any order it sees fit, including some specified orders if it finds the legal practitioner has engaged in professional misconduct or unsatisfactory professional conduct. The tribunal will also be able to make orders that will be implemented in other States and Territories. For instance the tribunal can make an order recommending that the name of a practitioner be removed from an interstate roll or an order recommending that a practitioner's interstate practising certificate be suspended or cancelled. Under part 4.9, the Legal Services Commissioner must keep a register of disciplinary action taken against lawyers. The register must contain the details of all disciplinary action taken against lawyers in New South Wales and of disciplinary action taken against lawyers in another State or Territory if there is a New South Wales connection to the conduct.

Part 4.10 contains a number of provisions to assist with interjurisdictional issues. Clause 583 allows the Legal Services Commissioner to enter into protocols with other jurisdictions for investigating and dealing with conduct that appears to have occurred in more than one jurisdiction. Under clauses 584 and 585 both the commissioner and the Law Society and Bar Association councils can request another jurisdiction to investigate a complaint, and other jurisdictions can also ask the commissioner or the councils to investigate a complaint. Clause 586 allows the Legal Services Commissioner and the Law Society and Bar Association councils to enter into arrangements with authorities in other States and Territories for the sharing of information. Clause 588 requires that authorities in New South Wales implement orders made by interstate disciplinary bodies, just as disciplinary orders made by the New South Wales Administrative Decisions Tribunal for removal of a practitioner's name from an interstate roll or cancellation of an interstate practising certificate, will be implemented elsewhere.

Chapter 5 provides for intervention in the business and professional affairs of legal practices in certain circumstances in order to protect the interests of the general public and clients of the legal practice. External intervenors can be appointed in a range of circumstances set out in clause 615, including where the practitioner has died, ceased to be a legal practitioner or has become insolvent under administration. Under clause 616 the Law Society Council may appoint a supervisor of trust money for a law practice where there are issues relating to the practice's trust accounts and it is not appropriate that the practice be wound up and terminated. Under clause 620 the supervisor is responsible for the trust money and accounts of the practice. The supervisor has power to open trust accounts, receive trust money and keep records relating to the trust account. A supervisor's appointment terminates when a receiver or manger is appointed, when all trust funds are distributed or where the Law Society determines that the appointment should cease.

Clause 616 also allows the Law Society Council or the Bar Council to appoint a manager where the practice is, or may become, a viable business concern and where for this to occur a person needs to be appointed to take over professional and operational responsibility for the practice. For instance, a manager may be appointed where the principal is sick or cannot otherwise run the practice. Under clause 626 the manager is responsible for carrying on the law practice. The manager may transact any urgent business, operate the trust account, accept instructions from clients, and wind up the affairs of the practice. The manager's role ceases when a receiver is appointed with the powers of the manager, where the practice has been wound up, or where the council has determined that the appointment should cease.

Under clause 616 the Law Society Council can apply to the Supreme Court for a receiver of a law practice to be appointed if it believes the appointment is necessary to protect clients' trust money and that it may be appropriate for the practice to be wound up and terminated. Under clause 633 a receiver is to be the receiver of trust money and other regulated property and to wind up and terminate the practice. The Legal Profession Act 1987 provides only for the appointment of receivers and managers. This bill provides another option of appointing a supervisor of trust money in circumstances where this would be more appropriate. Chapter 6 of the bill specifies the powers of investigation for trust account investigators, trust account external examiners, a complaints and discipline investigator, and a compliance auditor. Clause 670 allows the Legal Services Commissioner or the Law Society to conduct a compliance audit of a law practice to determine if the practice complies with the requirements imposed by the bill.

Chapter 7 deals with the constitution, appointment and functions of the Legal Profession Admission Board, the Legal Profession Advisory Council, the Legal Services Commissioner, the Law Society, and the Bar Association. These provisions are largely the same as in the Legal Profession Act 1987, but are modified where necessary to accommodate the changes introduced by implementing the national model provisions. Under clauses 702 to 704 the Bar Council and the Law Society Council will continue to be able to make rules in relation to legal practice. Chapter 8 contains provisions of general application to the bill. Clause 721 provides a general disclosure provision allowing information to be shared with interstate and New Zealand regulatory bodies.

It is a matter of some pride that New South Wales has initiated and led the Standing Committee of Attorneys General model laws process. This bill adopts the national model legal profession provisions, ensures that a national approach to the regulation of the legal profession is taken and removes barriers to legal practitioners practising across State and Territory borders. It establishes a regulatory framework that meets the needs of the profession, while at the same time protecting the interests of consumers. It is the culmination of many years' work and co-operation between the governments of each State and Territory in Australia, the Commonwealth Government, and the Australian legal profession. I am told that it is probably the most voluminous bill introduced into this House. It certainly feels like it from the length of the second reading speech. I commend the bill, with some exhaustion, to the House.