



NSW Legislative Council Hansard

Legal Profession Further Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 22 November 2006.

Second Reading

The Hon. MICHAEL COSTA (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [8.36 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this will be now read a second time.

The Government enacted the Legal Profession Act 2004 in December 2004 and commenced it on 1 October 2005. The Act is a major milestone in the regulation of the Australian legal profession, recognising and providing for a national profession. The Standing Committee of Attorneys-General developed the national legal profession scheme and model legislation in consultation with legal profession regulators and the profession. The scheme removes many of the barriers to increased efficiency and competition in the legal profession. The model provisions are designed to achieve greater consistency and uniformity in legal profession regulation in order to facilitate legal practice across State and Territory boundaries, and to standardise consumer protections across jurisdictions. All other jurisdictions are now working steadily towards implementing the updated model bill. I seek leave to have the remainder of my second reading speech incorporated in *Hansard*.

Leave granted.

The national framework is expected to be operational in mid-2007.

A joint working party reporting to the Standing Committee of Attorneys-General has been monitoring the implementation of the model bill, and has settled amendments to the original model bill as issues have arisen during implementation. Standing Committee of Attorneys-General Ministers approved amendments to the model bill in July 2006. The updated model bill was publicly released in late August, following further drafting refinements. The Legal Profession Further Amendment Bill amends the Legal Profession Act 2004 to maintain uniformity with the updated national model. The bill also makes a number of minor amendments requested by the legal profession regulators to improve the processes of administering the legislation. The bill also abolishes the Legal Profession Advisory Council. Following the significant revision of the model bill that has been undertaken by the national joint working group this year, I am confident that these changes will improve the current system, and I am hopeful that any further amendments, particularly in the next two years, can be kept to a bare minimum.

I now turn to some specific amendments contained in this bill. Schedule 2 to the bill contains amendments to bring the Act into line with the model bill. These include, first, amendments to extend the period in which a person may request an itemised bill and/or apply for assessment of legal costs. The period in which a person may request a costs assessment will increase from 60 days to 12 months, with a provision allowing out-of-time applications to be considered in special circumstances. Second, the bill includes amendments to extend costs disclosure to a person who is liable to a law practice to pay all or part of the legal fees in a matter, where that person is not himself or herself the client of the relevant law practice. One circumstance where this might arise is where parents pay for the legal fees in a matter in which their child is the law practice's client.

Third, the bill includes amendments to clarify that a person who is liable to pay legal costs, but who is not a client of a law practice, may apply for the assessment of the legal costs that the person is liable to pay. One example where these changes are relevant is where borrowers are required, under a mortgage contract, to pay the legal costs of their lender in preparing the mortgage documentation. In that case, borrowers will have a right to seek assessment of the legal costs of the law practice that advised the lender in the transaction. Fourth, the bill includes amendments to regulate the practice of foreign law in Australia, particularly in relation to professional indemnity insurance, so that disclosure must be made to an Australian registered foreign lawyer's clients where that lawyer does not have professional indemnity insurance that covers legal practice in Australia. Fifth, the bill contains amendments to provide greater powers for managers or receivers to require the production of information relating to the affairs or a law practice by third parties.

The bill also makes the following amendments to the Act to streamline its administration. First, it contains amendments to revise the role and procedures of the Legal Profession Admission Board in connection with the admission of persons to the legal profession, including removing the power of the board to refer issues relating to the suitability of persons for admission to the legal profession to the Supreme Court, prior to making a determination. Second, the bill contains amendments to revise the procedures for payments from and repayments to the Public Purpose Fund. Third, the bill contains amendments to repeal transitional provisions concerning barristers of the Australian Capital Territory. These provisions are no longer necessary now that the

Australian Capital Territory has enacted the national model legislation, and Australian Capital Territory barristers are now required to hold separate practising certificates.

Fourth, the bill contains amendments to the Administrative Decisions Tribunal Act 1997 in relation to the qualifications for appointment of a person as the divisional head of the Legal Services Division of the Administrative Decisions Tribunal, so that the appointee may be a judicial officer who does not hold a current practising certificate. Fifth, the bill contains other amendments of a minor, consequential or ancillary nature. Finally, the bill will also abolish the Legal Profession Advisory Council. The advisory council is an advisory committee that meets on an ad hoc basis to advise the Attorney General on the role and function of the legal profession.

With the move to a national scheme of legal profession regulation, there is no longer a role for a State-based advisory group. The National Legal Profession Joint Working Party now performs this function. The joint working party consists of representatives from each State and Territory, and four representatives from the Law Council of Australia. I take this opportunity to recognise the contribution that the council has made to the regulation of the legal profession in this State over its 12 years of operation. I also thank all council members and executive officers that have served the Attorney General and his predecessors so ably. I commend the bill to the House.