



Legislative Assembly

Legal Profession Amendment (National Competition Policy Review)

10/04/2002

Bill Hansard

Extract

Second Reading

Mr DEBUS (Blue Mountains—Attorney General, Minister for the Environment, Minister for Emergency Services, and Minister Assisting the Premier on the Arts) [8.22 p.m.]: I move:

That this bill be now read a second time.

The Legal Profession Amendment (National Competition Policy Review) Bill continues the process of reform of the regulation of the legal profession which the Government has undertaken since 1995. The changes to the system of regulation represented in the bill will reinforce the position of New South Wales as the pre-eminent Australian jurisdiction in terms of the effective and transparent regulation of the legal profession. Many of the reforms outlined in the bill were first recommended by the Attorney General's Department in its report on the National Competition Policy Review of the Legal Profession Act. Since that report was completed, a detailed consultation process has taken place, and the result is the bill before the House.

The first major reform contained in the bill relates to the practising fees for solicitors and barristers. The Act already provides that membership of the Law Society, in the case of solicitors, or the Bar Association, in the case of barristers, is voluntary. However, the practising fees levied on solicitors and barristers include the cost of both membership services, and the regulatory activities that the Law Society and Bar Association conduct, as required by the Legal Profession Act. The bill provides for the practising fee to cover only the costs of the regulatory activities undertaken by the Law Society and Bar Association. This fee will be approved by the Attorney General. The membership, or representative activities, will be included in a separate, optional membership fee, which solicitors and barristers will not need to pay unless they propose to join the Law Society or Bar Association.

This reform will bring about a true separation of the regulatory and membership functions of the Law Society and Bar Association. The resulting benefits will include more transparent cost structures of the Law Society and Bar Association, and potential savings for consumers; and the ability for solicitors and barristers to choose whether they wish to contribute to the cost of membership activities conducted by their professional associations. In order to ensure the accountability of the Law Society and Bar Association, the Attorney General may request that budgets be submitted to him or her before approval of the practising fee. The bill also provides for a person to be appointed by the Attorney General to examine the accounts of the Law Society and the Bar Association as necessary. These measures will ensure that the Law Society and Bar Association are accountable for their regulatory activities to the profession and to consumers, who ultimately bear the cost of practising fees paid by lawyers. The amendments will commence on 1 July 2004. This will allow enough time for the Law Society and the Bar Association to implement the internal management and accounting changes necessary to accommodate the formal separation of practising and membership fees.

The second reform contained in the bill makes it clear that a contravention of the rules governing advertising is capable of being professional misconduct or unsatisfactory professional conduct. Honourable members will be aware that the Government moved quickly to ban certain kinds of advertising by solicitors and advertising relating to personal injury services, when the depth of community concern about solicitors' advertising, and its relationship to the public liability crisis, became clear. Similar restrictions are also in force in relation to advertising for workers compensation services. Amendments made to the Act last year allow the regulations made under the Act to state that certain conduct is capable of being professional misconduct. However, the amendment to the Act included in the bill before the House sends a powerful message to the profession about the need to scrupulously observe the advertising restrictions. The bill makes it clear that breaching these rules can be grounds for a disciplinary action against a solicitor or a barrister.

The bill also promotes multidisciplinary practice in the legal profession by removing the power of the Law Society to make practice rules preventing solicitors from practising with other professionals in multidisciplinary partnerships. Honourable members may be aware that the Law Society in fact removed restrictions on the sharing of profits between lawyers and non-lawyers, paving the way for multidisciplinary practices in late 1999. While I am not aware of any intention by the Law Society to reintroduce restrictions, the legislative statement of this principle is an endorsement by the Government of solicitors practising in flexible business structures. This reform is a key plank of competition policy reform, and will facilitate competition between solicitors and other service providers.

The bill requires solicitors rules and barristers rules to be publicly exposed before they are made. The solicitors rules and barristers rules cover aspects of day-to-day practice by the profession, including ethical precepts, the conduct of practitioners before the court, dealing with fellow practitioners and clients, and the disclosure of

costs. I have a keen interest in ensuring that the Bar Council and the Law Society Council are accountable for the content of the practice rules, and the proposed reform will ensure that the general public has an input into the rules before they are made.

Honourable members may be aware that I have recently commissioned a report on the rules, which was conducted by Michael Chesterman, Emeritus Professor of Law at the University of New South Wales. Professor Chesterman has made a number of recommendations to improve the rules, such as, for example, including a statement of ethics as part of the rules, and making them more accessible to consumers. While the making of rules is a matter for the Law Society Council and the Bar Council respectively, I take this opportunity to express my support for Professor Chesterman's recommendations and my hope that the councils will consider them carefully.

In order to promote the development of a national legal services market, the bill provides that any practitioner who holds a practising certificate from another Australian jurisdiction can practise in New South Wales as long as he or she meets certain standards set out in the Act. In 1996 the Standing Committee of Attorneys-General endorsed a national practising certificate scheme, which allows the solicitors and barristers in each State and Territory to practise in another jurisdiction if both the jurisdictions concerned have enacted the provisions.

The requirement for reciprocity has hampered the development of truly national practice, because some States have yet to pass the necessary amendments. The bill will remove the reciprocity requirement, so that any Australian solicitor and barrister can practise in New South Wales. I am pleased to advise honourable members that I hope that this amendment will soon become redundant. At the recent meeting of the Standing Committee of Attorneys-General my colleagues from Western Australia and Queensland expressed their intention of enacting the provisions in the near future. If they do this all jurisdictions will have the scheme in place, and I look forward to these reforms as a milestone in the continuing development of national practice.

I turn to a reform of great importance to consumers of legal services. The bill requires the Law Society Council and the Bar Association to publicise disciplinary action that is taken against solicitors and barristers, and requires the Legal Services Commissioner to set up a public register of such action. The establishment of a public register will allow consumers to find out whether the barrister or solicitor they plan to engage has, for example, been subject to disciplinary action taken by the Administrative Decisions Tribunal following a complaint. The register will be available by Internet on the web site of the Legal Services Commissioner. The register will enhance the transparency and accountability of the disciplinary process and allow consumers to make an informed choice about engaging a solicitor or barrister.

As I have indicated in the case of the other reforms in this bill, this amendment forms part of a broader examination of the reform of the regulation of the profession. Honourable members would be aware that I released a discussion paper late last year on the disciplinary scheme in the Act, and I plan to bring forward a comprehensive reform package in that respect in the near future. However, I considered that the establishment of a public register of disciplinary matters warranted urgent attention and sought its inclusion in the bill. I commend the bill to the House.