Legal Profession Amendment Bill.

Second Reading

Mr BOB DEBUS (Blue Mountains—Attorney General, and Minister for the Environment) [12.27 p.m.]: I move:

That this bill be now read a second time.

The Legal Profession Amendment Bill makes a number of amendments to the Legal Profession Act 1987 relating to the discipline of the legal profession and is designed to improve the ease with which disciplinary matters may be prosecuted by the regulatory authorities. The amendments are a very small part of a bigger picture. In the spring session of Parliament I will introduce a new Legal Profession Bill. To this end, Parliamentary Counsel and officers of my department are presently working on a complete revision of the Legal Profession Act 1987. This rewrite will incorporate the national legal profession model laws that were recently released by the Standing Committee of Attorneys-General. It will also amend the complaints and discipline provisions to reflect the recommendations of the New South Wales Law Reform Commission's Report No. 99, "Complaints Against Lawyers: An Interim Report", and the recommendations in my department's report entitled "Further Review of Complaints Against Lawyers".

In the meantime, the regulatory authorities have alerted me to a number of minor amendments that will provide immediate benefits by improving the ease with which disciplinary matters against misbehaving lawyers may be prosecuted. These should not be delayed just because more time is needed for the larger project that I have just described. I draw attention in particular to the provisions of this bill that will reduce the ability of practitioners to delay or thwart disciplinary proceedings against them. Unfortunately, some practitioners will resort to every trick in the book when a complaint is made against them. Amendments to section 152 of the Act will provide that a notice requiring a practitioner to co-operate with an investigation is served on a practitioner if it is posted to the address of the legal practitioner last notified to the council. These amendments substantially implement recommendation 13 of the Law Reform Commission Report No. 99, which considered that the service requirements should be relaxed.

Recommendation 17 of the Law Reform Commission's report No. 99 is addressed by amendments to sections 155 and 160 of the Act. These remove the requirement that a council or the commissioner can reprimand a legal practitioner only with the practitioner's consent. A new section 171N is inserted to provide for appeals from the decision to reprimand, but if the reprimand is upheld by the tribunal it becomes a public reprimand. Amendments to section 171C ensure that whenever the tribunal orders a public reprimand of a practitioner both the order and the reasons for the reprimand will need to be published. A recent decision in the Administrative Decisions Tribunal decided that when a disciplinary hearing had been held in private it was not appropriate to publish the tribunal's decision.

My firmly held view is that proceedings are held in private to protect practitioners if the allegations against them are not upheld. Once the tribunal has made a finding against a practitioner there is no further justification for keeping the matter private. A new section 167AA will provide that the commissioner or council may constitute proceedings in the tribunal at any time within six months after a decision to constitute proceedings is made. The Bar Council has been finding that some of its prosecutions are complicated by parallel proceedings in other forums. The more generous time frame, and a power for the tribunal to extend time, will ensure that defaulting practitioners do not get off on a technicality.

Similarly, new section 171, taken from the national model laws, will allow the tribunal to order that a failure to observe a procedural requirement may be disregarded if the parties have not been prejudiced by the failure. Giving the tribunal power to rectify technical errors made by the regulatory authorities is sensible and pragmatic, particularly when the only consequence has been that the practitioner has been able to practise for longer than they would have otherwise. New section 171U ensures that a breach of an undertaking made to the regulatory authorities by a practitioner is capable of being unsatisfactory professional conduct or professional misconduct. This amendment implements recommendation 20 in the Law Reform Commission's report No. 99.

Three other amendments in this package are more in the nature of tidying up. Amendments to sections 3, 30 and 37 permit a council, when issuing or renewing a practising certificate, to take into account evidence of an act of bankruptcy or a finding of guilt for an indictable or taxation offence which occurred prior to the practitioner's admission as a legal practitioner. New section 171F completes the implementation of recommendation 36 in the Law Reform Commission's report No. 99 by providing that all appeals from the tribunal at first instance will lie to the Supreme Court only and not to the appeal panel of the tribunal. This saves the parties going through one extra step on their inevitable way to the Supreme Court.

Amendments to definitions in section 198L clarify that practitioners must not file any documents during proceedings relating to a claim for damages unless the practitioner certifies that the claims or defences made have reasonable prospects of success. The new definitions will ensure that all filings, including further and amended pleadings, are

caught by this requirement. I trust that these amendments will facilitate successful prosecutions by the regulatory authorities and play their part in maintaining the standard of conduct that the community expects of legal practitioners. I commend the bill to the House.