



Speech by

Evan Moorhead

MEMBER FOR WATERFORD

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LEGAL PROFESSION BILL

Mr MOORHEAD (Waterford—ALP) (8.37 pm): I rise to make a brief contribution in support of the Legal Profession Bill 2007. This is certainly a very large and complex piece of legislation. This legislation is very significant in terms of the modern legal profession in Queensland and Australia and it is very significant for the consumers and users of legal services in our state. This bill adopts model laws to deliver greater uniformity of regulation for legal practice, reduce cross-border compliance costs, remove regulatory barriers to national legal practice and provide greater protection to the consumers of legal services across jurisdictions.

The trust account provisions of this bill will continue to protect clients whose money is held in trust by law practices. Similarly, the provisions on legal costs of this bill will provide greater consumer protection. The important safeguards with respect to costs contained in the bill include stricter disclosure requirements, provision for the setting aside of unfair costs agreements, prohibition of contingency fees, capping of uplift fees, better billing practices and costs assessments under the rules of court.

The issue of regulation of legal costs is an important question not only of fair trade practices but of access to justice. The reality for many in our community is that the major barrier to accessing our courts of justice is the cost of legal representation. People who seek legal advice to vindicate their legal rights need the opportunity to be very clear about what it is they will end up paying for their legal representation. People need to make an informed consideration of their prospects when they instruct lawyers.

This bill will continue the requirement that cost agreements must be in writing where the total legal costs will be \$750 or more. Among other things, cost agreements must disclose to potential clients the basis on which costs will be calculated, the right to negotiate, the right to receive a bill and to request an itemised bill and an estimate of costs or the range of costs.

As well, when settling litigation lawyers must provide a reasonable estimation of legal costs so that clients can clearly assess whether a proposed settlement will meet their liability for legal costs. Legal practitioners will also be required, if requested to do so by a client, to provide a written progress report or a written report on costs incurred. If there is any substantial change to matters that have been disclosed, the law practice must update their client. This bill will also ensure that, where uplift fees are agreed to, they are agreed to on the basis of a full and proper disclosure and that they do not exceed 25 per cent. The costs agreement and disclosure regime contained in this bill will improve the information available to clients and potential clients and ensure that the decision to instruct legal representatives is made with the full information before them.

This bill will also strengthen the complaints and disciplinary process for lawyers. A comprehensive set of professional standards and an effective disciplinary scheme is an essential measure to protect the public and maintain public confidence in the legal profession. Although much maligned, legal practitioners hold a significant position of trust in our community. It is essential that anyone who is not worthy of that trust is not permitted to practise law in Queensland. To ensure all law firms have sufficient time to comply with the new provisions, law practices will have until 1 January 2008 to comply with the new professional costs requirements and 31 March 2008 for the new trust account measures.

I wish to refer to the Scrutiny of Legislation Committee's *Alert Digest No. 5* tabled today and its comments on the Legal Profession Bill 2007. The committee, of which I am a member, has made some wise and astute comments on this bill which I commend to all members. The committee acknowledged that the bill is an extremely large document of 549 pages containing 770 clauses and two schedules. It essentially represents the third and final stage of the government's comprehensive reforms of the legal profession. The committee noted—

In relation to the current bill generally, and specifically in relation to the new additional provisions which it contains, the committee considers that although the bill (like both the 2003 and 2004 bills) is lengthy, complex and a significant piece of legislation, it raises comparatively few issues for the committee.

The committee did focus on clauses 299 to 352, which deal with provisions regulating the way in which lawyers may charge clients for the legal services they provide. The committee noted—

Many of these provisions could be said to interfere with the common law right of persons (in this case lawyers and their clients) to freely contract with each other. However, the Part 3.4 provisions are self-evidently designed to protect consumers in an environment in which they might otherwise be somewhat disadvantaged.

The committee also examined clause 352, which confers on a cost assessor the same protection and immunity as a judge performing the functions of a judge. A cost assessor is a person authorised under the uniform civil procedures rules to perform that function. The committee concluded after considering this clause—

Given the nature of the costs assessment function, the conferral of these immunities does not appear unreasonable.

The passage of this bill does not mean that the work has been completed. Facilitating legal practice across state and territory borders throughout Australia will be an ongoing and long-term project. Clearly, as the new regulatory regime and operational experience matures, the national process contemplates that the national model bill and the legal profession acts in each state and territory will need to be revised and amended from time to time. Other initiatives will also be necessary to complement and support the intended operation of the national and local reforms.

A joint working group including representatives from each jurisdiction from around the country and the Law Council of Australia will continue to monitor the model legislation and to report to the Standing Committee of Attorneys-General on these issues. Jurisdictions have agreed that further changes to the model, unless urgently required, will be considered as part of a two-year post implementation review. Implementation will need to be monitored to ensure that the legislation and regulations in each jurisdiction remain consistent over the longer term and are achieving the objectives of the national reform process. I look forward to the implementation of this legislation. I also look forward to the monitoring and assessing of the operation of these laws in that first two-year period. I commend the bill to the House.