



Speech by

Hon. Kerry Shine

MEMBER FOR TOOWOOMBA NORTH

Hansard Thursday, 19 April 2007

LEGAL PROFESSION BILL

Second Reading

Hon. KG SHINE (Toowoomba North—ALP) (Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland) (12.31 pm): I move—

That the bill be now read a second time.

The Legal Profession Bill 2007 will complete the government's legal profession regulatory reform program. I seek leave to incorporate the balance of my speech in *Hansard*.

Leave granted.

The Bill continues to build on national model laws for the regulation of the legal profession developed through the Standing Committee of Attorneys-General.

The model laws were developed with the objectives of removing regulatory barriers to national legal practice, reducing regulatory compliance costs and providing for consistent protection of consumers across jurisdictions.

The model Bill has not been agreed to be adopted wholly on a uniform basis.

While some provisions will be uniform, others have been agreed to be adopted but not on a uniform basis. There are also provisions that are optional because they can differ without impacting on national practice.

In the *Legal Profession Act 2004*, the Government has already substantially implemented the national model laws in the areas of:

- admission and practice;
- the reservation of work,
- the complaints and disciplinary processes,
- the fidelity fund,
- external administration,
- incorporated legal practices and multi-disciplinary partnerships,
- the registration of foreign lawyers, and
- the financial arrangements for the control and allocation of interest on solicitors' trust accounts.

The Bill will replace and incorporate provisions from the 2004 Act, updated for changes to the model.

It will implement the trust account and costs provisions from the model.

It adopts the chapter and part numbering from the model for ease of reference on a national basis.

By adopting the trust account provisions from the national model laws, the Bill has the objectives of:

- the protection of trust money is held by law practices;
- minimising compliance requirements for law practices by providing for consistent national treatment of trust accounts; and
- ensuring the Queensland Law Society, as the supervising entity, can work effectively with authorities in other jurisdictions in relation to the regulation of trust money and trust accounts.

The principal provisions are those which require a law practice that receives trust money in Queensland to maintain a general trust account in Queensland and keep proper trust account records.

Because of the inter-jurisdictional issues, there are provisions for determining when trust moneys are received.

The main difference for Queensland practitioners is that controlled moneys (say, those received with the instruction that they be banked to a law practice investment account) will not need to first go through the general trust account, although there is nothing to stop solicitors from continuing to do so.

Under the current legislation, the financial period for trust account audit purposes ends on 31 March each year.

While law practices will be able to comply with the new legislation from commencement, the transitional provisions will allow them to continue to keep and deal with trust money and keeping trust account records under the current regulatory regime up until 31 March 2008 to allow for an appropriate lead time.

The new costs provisions build on current requirements relating to costs disclosure, costs agreements, billing and costs assessment.

Some important elements include:

- co-operative arrangements among jurisdictions about how inter-jurisdictional issues are to operate,
- a costs disclosure regime that will benefit consumers of legal services;
- provision for the setting aside of unfair costs agreements;
- exceptions for sophisticated clients (such as public companies);
- a requirement for disclosure updates;
- how costs are recoverable;
- regulation of uplift fees;
- prohibition on contingency fees;
- billing practices; including requests for itemised bills and interim bills; and
- a costs assessment process under the rules of court.

While law practices will be able to comply with the new costs provisions from commencement, the transitional provisions will allow them to continue under the current regulatory regime up until 1 January 2008 to allow for an appropriate lead time.

The Bill also includes a number of miscellaneous amendments that have been developed in light of experience with the 2004 Act.

Some of the more significant changes include:

- providing for the legal profession rules to be made by the regulatory authorities, subject to notification by the minister, where the drafting style for national legal profession rules is not compatible with the style for drafting subordinate legislation;
- ensuring that the Queensland Law Society can make legal profession rules prohibiting Australian legal practitioners and Australian-registered foreign lawyers from engaging in mortgage financing and activities and practices in relation to mortgage financing;
- facilitating volunteers practising certificates being issued; and
- clarifying the operation of the cap on solicitors' fees in speculative personal injury proceedings matters.

A joint working group including representatives from each jurisdictions and Law Council of Australia are continuing to monitor the model legislation.

Jurisdictions have agreed that further changes to the model, unless urgently required, will be considered as part of a two-year post implementation review.

I would like to signal that further amendments to the legislation may be needed in due course for developments to the model as a result of these processes.

The Bill, and the model on which it is based, have been extensively consulted on. Nevertheless, given the extent of the changes proposed, I would like to indicate the Government's willingness to consider submissions about the Bill while it lies on the table.

Before concluding, I would like to thank those consulted on the Bill for their contributions.

I commend the Queensland Law Society and the Bar Association of Queensland for their constructive approach to the development of this legislation.

I commend the Bill to the House.