Speech by

Hon. Kerry Shine

MEMBER FOR TOOWOOMBA NORTH

Hansard Tuesday, 22 May 2007

LEGAL PROFESSION BILL

Hon. KG SHINE (Toowoomba North—ALP) (Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland) (8.43 pm), in reply: I would like at the outset to thank all of those members who have contributed to the debate on this bill. It is in fact a very substantial piece of legislation. The Legal Profession Bill 2007 builds upon the significant legal profession reforms already implemented by the Beattie government. Significantly, it implements the national legal profession reform laws which Queensland has been actively involved in developing. These 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 reforms are necessary to fully implement a truly national legal services market. They enable the delivery of legal services on an Australia-wide basis which will allow the legal profession to meet existing and future market demand for legal services. The reforms also allow Australian law firms to compete on a national and international basis and to market themselves to international companies looking to invest in Australia. Importantly, the reforms will underpin an integrated and national approach to the regulation of the legal profession and the protection of consumers of legal services.

The development of the model bill involved officers from all states and territories and the Commonwealth. The legal profession was represented on the project through the Law Council of Australia. A detailed officers' paper was released in 2002 and the first version of the model bill was approved and a memorandum of understanding for implementation of the model was signed by SCAG ministers in July 2004. This may seem like a significant period of time to achieve agreement to implement a model bill. However, it should be recognised that the level of complexity of the laws governing the legal profession across the states and territories and the differing views held by different parts of the profession both within and across borders were significant. I would like to commend officers working on the project and the contribution made by the legal profession to the development of these reforms. I would also note that it is perhaps not insignificant that for most of the time of the model laws project all or most of the states and territories had Labor governments. The result of this cooperative effort is a reform platform that positions Australia at the forefront of legal profession regulation internationally.

I would like to acknowledge former Queensland Attorneys-General during this time—the minister for education and the member for Kurwongbah—for their stewardship of the earlier reforms. This first stage of Queensland's legal profession reforms was set out in the Legal Profession Act 2003. That act was based on parts of the national model laws as they had been developed to that point. The act provided for the new independent Office of the Legal Services Commissioner with responsibility for receiving all complaints against lawyers, ensuring proper investigation and prosecuting disciplinary action in appropriate cases. The disciplinary regime was also strengthened with a Legal Practice Tribunal chaired by a Supreme Court judge to hear more serious matters and a Legal Practice Committee to hear lesser charges involving only unsatisfactory professional conduct.

The bill also took into account the results of the national competition policy review of Queensland's previous legal profession legislation conducted in 2001 and 2002. The 2003 act provided the authority for steps to be taken to put the new structural regulatory arrangements in place. The 2004 act incorporated

further changes from the model laws to that time. Only the trust account and costs provisions from the national model bill, which have been the subject of considerable development since that time, were still to be enacted. The incorporated legal practice and multidisciplinary partnership and foreign lawyer provisions from the 2004 act were not commenced. After the assent of the 2004 act, the *University of Queensland Law Journal* retraced these and earlier legislative steps in our state. The journal stated—

The changes of the law and practice have fairly reflected the needs of the community since 1859 and that, in the dynamics that have always characterised the structure of the legal profession, the provisions of the 2004 Act are just one more step in a long and continuing path.

The 'one more step' in this long and continuing path towards establishing a truly national legal services market is this bill. I note the comments of the Scrutiny of Legislation Committee from its consideration of the Legal Profession Bill. I note from *Alert Digest No. 5* tabled in parliament today that the committee does not object to provisions of the bill. The committee did examine issues regarding the rights and liberties of individuals and the provision of immunity on a cost assessor. The committee does not object to the provisions in these areas.

During my second reading speech I indicated a willingness to consider submissions about the bill while it lay in the House. I wish to move a number of amendments to the bill during consideration of the clauses, and I now table the explanatory notes for those amendments.

Tabled paper: Attorney tabled Explanatory Notes to Amendments to Legal Profession Bill to be moved during consideration in detail.

Some of these amendments have arisen as a result of consultation on the bill. Others are of a more minor or technical or transitional nature. The changes to the commencement provisions are to facilitate the Queensland Law Society and the Bar Association of Queensland making necessary rules before commencement. They clarify that the requirement to give public notice of the legal profession rules does not apply to the rules made before commencement. This is considered reasonable where the Bar Association will only be remaking its existing rules approved for the commencement of the Legal Profession Act 2004 and the Queensland Law Society has already consulted under the Legal Profession Act 2004 on the rules that it intends to have effect on commencement.

There are amendments to ensure that the rules made by the Queensland Law Society about professional indemnity insurance can apply either to the holder of a practising certificate or a law practice. There is a new transitional provision which ensures that barristers can continue to be retained on an honorarium basis for six months from commencement. There are further amendments to other enactments as a consequence of the bill providing for the Trust Accounts Act 1973 to not apply to solicitors' trust accounts.

Let me address the matters raised by the member for Caloundra. I thank the honourable member for Caloundra for indicating the opposition's support for the bill. The member for Caloundra was correct when he said that the reputation of the legal profession has been damaged by the actions of a few in the past decade. It has always been the case over the last century and a half that there have been people in the profession who have gone off the rails. It is just that we have far more solicitors nowadays and we notice these things more readily and we give them more publicity. The government's move to establish the Legal Services Commission under the Legal Profession Act 2004 was important in addressing these issues. The Legal Services Commission is an independent statutory body whose primary role is to deal with complaints about the conduct of solicitors, barristers and law practice employees. I commend the work of Mr John Briton and his staff in that regard.

The member for Caloundra also made the point that the necessity for these reforms is highlighted by the workings of a global economy. Queensland is Australia's economic powerhouse and a strong economic force in the Asia-Pacific region. I am proud to be a member of a government that has presided over such strong economic growth. Our economic growth is double the national economy; the unemployment rate is at a record low 3.7 per cent compared with the national rate of 4.5 per cent; and for every five jobs created in Australia two of them are being created in Queensland. With this in mind, the reforms in this bill are clearly evident in Queensland.

The member for Caloundra referred to the new terms contained in the bill, such as 'third party payer'. Consistent with the national model laws, the bill recognises that others who may be liable for the costs have a right to have their costs assessed. These persons are referred to in the bill as third-party payers. Under the bill they, too, will have rights to receive information about the costs for which they are liable and to apply to have those costs assessed.

This will apply to non-associated third-party payers—that is, persons who may be liable to have costs passed on to them by clients. The member for Caloundra gave the instance of a lessee. It would apply to a mortgagor as well. The law practice must provide the non-associated third-party payer, on the written request of the third-party payer, with sufficient information to allow the third-party payer to consider making, and if thought fit to make, an application for a costs assessment.

The legislation imposes disclosure obligations of law practices for associated third-party payers who contract directly with the law firm to pay a client's legal costs. For example, a parent may contract directly with the legal firm in relation to the legal costs of their adult child who is the client, or a sole shareholder may be personally liable for the legal costs of a company. Associated third-party payers are only entitled to

billing information about aspects of the fees for which they are liable. For example, they may only be liable for legal costs of $5,000 out of overall legal work for a client totalling $50,000.

Generally, the cost provisions of the bill will apply where the client first instructs the law practice in Queensland. A client first instructs a law practice when the law practice receives from the client written instructions in Queensland, whether by personal delivery or by post, facsimile, email or some other form of communication. The cost provisions will also apply where clients agree with a law practice that Queensland's legislation is to apply.

Consistent with the national model, there is a corresponding provision for clients to whom the Queensland legislation would otherwise apply to agree that corresponding laws of other jurisdictions will instead apply. This can occur if the legal services are to be provided wholly or primarily in another jurisdiction, or the matter has a substantial connection with another jurisdiction. An example of this type of situation would be where litigation is to be conducted in another court in another jurisdiction. In some circumstances, different legal profession laws will govern a client's rights at different stages of a matter. Under clause 307, the bill provides for these circumstances by setting out a range of criteria for how the respective legislation will apply for the relevant periods.

The member for Caloundra raised the issue of Legal Aid Queensland. Generally, the disclosure requirements do not apply where the client will not be required to pay the legal costs. In relation to Legal Aid Queensland, it is not intended that the disclosure requirements of the bill will apply to arrangements for legally assisted persons who are represented by Legal Aid Queensland or by private legal practitioners on the 'preferred supplier panel' who are paid by Legal Aid Queensland. This can be clarified by regulation as necessary.

The Legal Aid Queensland Act sets out its own framework. Sections 17, 18, 36 and 39 of the Legal Aid Queensland Act 1997 are the applicable sections in this case. These provisions give Legal Aid Queensland the right to impose a condition on the granting of legal aid that the legally assisted person is required to repay part or all of the costs of providing legal assistance. They also permit Legal Aid Queensland to charge for costs where the legally assisted person retains or recovers property. It is also important to note that Legal Aid Queensland's fees are below the scale fees. A matter that is legally assisted by Legal Aid Queensland is not comparable to that involving the ordinary client-private legal practitioner relationship in terms of the costs arrangements. The purpose of the disclosure provisions is to ensure that clients are appropriately informed about costs and related matters in deciding whether to engage legal services.

For a legally assisted matter, the legal costs are agreed to be paid by Legal Aid Queensland to the solicitor, or preferred supplier. These fees are significantly below the legal scale of costs. Contributions to costs from legally assisted persons are only required in a limited number of matters, including some civil law matters—such as criminal injuries compensation applications, discrimination matters, crimes confiscation matters and consumer credit matters, and family law matters involving property where it is relevant to a matter involving custody of children.

When a grant of aid is made by Legal Aid in a matter where the client may be required to make a contribution to the costs—either up-front or after a matter is finalised in the client's favour—Legal Aid Queensland informs the legally assisted person directly about this obligation. Often the legally assisted person is required to sign a charge in favour of Legal Aid Queensland over property or an acknowledgement that he or she will pay to Legal Aid Queensland an amount of the costs in the matter upon its finalisation. Legal Aid Queensland publishes its grants handbook on its web site, where legally assisted persons can access information about the range of grants of aid available and the cost/value of those grants.

The honourable member for Nicklin also spoke in favour of the bill. He was particularly pleased that the bill referred to compulsory disclosure, as opposed to recommended or voluntary disclosure, and noted that the word 'must' appeared significantly in the relevant sections. I also thank all government members for their considered contributions. It is always of benefit to the House to hear the contributions of the member for Southport, bearing in mind his many years as an experienced and talented solicitor.

It was also beneficial to hear the member's knowledgeable remarks in relation to costs and what he has been told is happening with respect to their assessment in the Supreme Court. In the past 12 months the honourable member for Inala celebrated becoming a member of this parliament and also becoming a solicitor within a week of one another. It would be truly difficult to work out which was the highest honour that she has received but she has been doubly blessed, that is for sure.

The honourable member for Barron River, as always, made a very valuable contribution. He described in some detail the attributes of the national profession approach that we have taken. The member indicated that he thought that the volunteer practising certificate that is referred to in this bill is peculiar to Queensland. I am advised that Victoria has also made use of this volunteer practice certificate system. As always, the members for Keppel and Waterford made very important and significant contributions.

It is the case that all of those who spoke from both sides of the House are lawyers. It is a very positive thing to have lawyers in this House from both sides. They make valuable contributions. It is indeed an honourable profession. At least those who have spoken in the debate agree with me.

I was invited to make a short address at the Bar Association's conference at the Gold Coast. I made the observation that when I first became interested in politics there were many barristers involved in state politics as well as in federal politics. In the 1960s, the Supreme Court bench comprised of three barristers who later became judges when I was an articled clerk: Graham Hart, Charlie Wanstall and later Peter Connolly. All of those judges had been members of this House and all had been barristers. I make that observation to the House to indicate that I think personally it is regrettable that apparently members of the bar do not seek endorsement to be a member of this House as did others previously, going back to TJ Ryan and Sir Samuel Griffith, for example. Although I have been encouraged to expand on my remarks, I will leave it there. No doubt members will wish to ask further questions during consideration in detail.

Question put—That the bill be now read a second time.

Motion agreed to.