

**LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2021**

*Consideration in Detail*

**Clauses 1 to 223 put and passed.**

**Clause 224: Effect of secrecy provisions and non-disclosure orders —**

**Mr J.R. QUIGLEY** — by leave: I move —

Page 119, line 28 — To insert after “subsection (1),” —

unless an order has been made under subsection (3)

Page 120, after line 2 — To insert —

- (3) A court or tribunal that makes an order or finding that constitutes, or results or may result in, disciplinary action against a person may make an order prohibiting the disciplinary action from being publicised.
- (4) A court or tribunal cannot make an order under subsection (3) unless the court or tribunal considers that there are exceptional circumstances justifying the making of the order.
- (5) If an order has been made under subsection (3) —
  - (a) the name and other identifying particulars of the person against whom disciplinary action is taken, and the kind of disciplinary action taken, must be recorded in the register of disciplinary action in accordance with the requirements of this Division; but
  - (b) that information must not be —
    - (i) made available for public inspection on the register or provided to members of the public under section 220; or
    - (ii) otherwise publicised under this Division; or
    - (iii) given to a corresponding authority unless the authority gives an undertaking to the Board that the information will remain confidential and will not be made available for public inspection or otherwise publicised.

**Ms M.J. DAVIES:** These amendments have been moved after the bill has been second read, so perhaps the Attorney General can provide an explanation about why these provisions were not included in the bill and what he is seeking to do with them.

**Mr J.R. QUIGLEY:** Certainly. There are cases—I can think of cases in the Family Court—in which practitioners and judges can be put at risk. As the Leader of the Opposition might recall, an upset litigant assassinated a Family Court judge in Sydney by blowing him up. Sometimes litigants make a threat against the life of a legal practitioner in the Family Court. These things become very emotionally intense. A person might make a complaint against his wife’s lawyer. There might be a finding of some sort against the wife’s lawyer; for example, that he acted in a bullying fashion or whatever. If the tribunal found that the wife’s lawyer had acted in a bullying manner and that decision was publicised, that might be enough to provoke the husband to seek retribution against the lawyer in some physical or threatening way. As a result of the representations received by the government and, once again, concurring advice from the Solicitor-General, it was decided that the tribunal or court can keep the disciplinary finding a secret only in exceptional circumstances. We would not want a disciplinary finding against a wife’s lawyer to result in that lawyer, or the lawyer’s family, coming under physical attack or threat. These things could become emotionally charged. There would have to be that sort of exceptional circumstance before the tribunal would invoke this. Death threats have been made against lawyers in the past, especially in the Family Court jurisdiction. The exercise of the discretion will rest with the disciplinary body—that is, the State Administrative Tribunal. The president of that tribunal, who hears disciplinary matters against practitioners, is herself—I say “herself” because it was a “himself” previously—a Supreme Court justice; indeed, she is a justice of the Court of Appeal. We trust the president’s judgement and we trust the tribunal’s judgement on exceptional circumstances to do with practitioner safety.

**Ms M.J. DAVIES:** I have two questions. Was a briefing offered to the shadow Attorney General? I am the secondary on this legislation, so I may not have received it. I have not spoken to my office. Was the shadow Attorney General advised of the amendment? Can the Attorney General explain why it was not included in the original bill? What prompted the amendment, given that the bill was just read a second time and now we are amending the government’s own legislation?

**Mr J.R. QUIGLEY:** It was prompted by a circumstance of a nature that I described to the Leader of the Opposition occurring between it having been introduced and today. The amendment was only introduced today. A confidential

briefing was not provided to the shadow Attorney General but it will be before this bill is presented in the other place. All I can say is that it goes to issues of safety, and not to keeping secret issues of embarrassment to a practitioner.

**Amendments put and passed.**

**Clause, as amended, put and passed.**

**Clauses 225 to 421 put and passed.**

**Title put and passed.**