

LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2021

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 192: Term used: claim —

Committee was interrupted after the clause had been partly considered.

Hon MATTHEW SWINBOURN: Before we were interrupted by question time, I was in the process of providing an answer to a question that Hon Nick Goiran asked about repayment costs in clause 194. Clause 194(e) deals with the payment of costs out of the guarantee fund for the cost of external investigations. Currently, such costs are paid out pursuant to section 336(3)(c) of the Legal Profession Act. This refers to costs payable to the trust under section 234(3) of the act. Section 234(3) provides that when an investigator is appointed at the request of the trust, the board may require the trust to pay all or part of the cost of carrying out the investigation.

Hon NICK GOIRAN: Thank you for that, parliamentary secretary. After quite a truncated question time, which I know some members seem to think is a bit of a joke —

Hon Kyle McGinn interjected.

The DEPUTY CHAIR (Hon Jackie Jarvis): Order, member!

Hon NICK GOIRAN: If Hon Kyle McGinn would just calm down, he would —

Hon Kyle McGinn interjected.

The DEPUTY CHAIR: Members, we are in Committee of the Whole House and we would like to get through a significant number of clauses. We are dealing with clause 192. Hon Nick Goiran, do you have a question?

Hon NICK GOIRAN: Indeed, I do. I think Hon Kyle McGinn may be tired at the end of a long week, but if he took a moment, he would realise that back in the day when we were in government, question time would routinely finish at 5.05 pm or 5.10 pm.

The DEPUTY CHAIR: I ask the member to not make comments that invite interjections and I ask the member to not interject. We can return to the business of the Committee of the Whole House. We are dealing with clause 192.

Hon NICK GOIRAN: Thank you very much, deputy chair. My question pertains to the clause before us, now that it is 5.05 pm, which is the normal time that we would commence after question time. The parliamentary secretary indicated that the board might require these costs for an external investigation to be paid. Is that routinely done at the moment?

Hon MATTHEW SWINBOURN: Yes; I am advised that that is the case.

Clause put and passed.

Clauses 193 to 201 put and passed.

Clause 202: Terms used —

Hon NICK GOIRAN: We are now dealing with part 9 of the bill. This deals with what has been described as “proceedings”; it is probably best described as “disciplinary proceedings”. Why it has necessarily been referred to as “proceedings” is not immediately apparent. Nevertheless, can the parliamentary secretary give an indication whether any provision in part 9, which runs from clause 202 to clause 215, will materially change the disciplinary process for legal practitioners in Western Australia?

Hon MATTHEW SWINBOURN: I will go through a couple of points first of all. There is no equivalent clause to clause 204 in the current Legal Profession Act. This clause provides that the State Administrative Tribunal must conduct proceedings initiated under the act or the Legal Profession Uniform Law (WA) in accordance with the State Administrative Tribunal Act that is subject to the act and the law. For example, review proceedings commenced in the tribunal pursuant to sections 100, 101, 314 and 358(1) of the Legal Profession Uniform Law will fall within a tribunal’s review jurisdiction. On the other hand, disciplinary proceedings initiated in the tribunal under section 310 of the Legal Profession Uniform Law, will be conducted in the tribunal’s original jurisdiction. As I say, there are no equivalent provisions to those in the Legal Profession Act.

Further, clause 205, “Disciplinary proceedings may involve 1 or more matters”, provides that disciplinary proceedings initiated in the State Administrative Tribunal may relate to one or more matters that involve or may involve unsatisfactory professional conduct or professional misconduct, and there is no equivalent provision in the Legal Profession Act.

Clause 206, “Time for initiating disciplinary proceedings under Uniform Law s. 300”, provides that the board must initiate a disciplinary proceeding in the State Administrative Tribunal within six months of deciding to initiate

proceedings, and the tribunal may on application grant the board leave to initiate such proceedings after six months' time. The relevant provision in the legal profession uniform law is section 300, which provides for the designated local regulatory authority, the Legal Practice Board, to initiate and prosecute proceedings in the designated tribunal, the State Administrative Tribunal, and there is no equivalent provision in the current Legal Profession Act. Those are the equivalent provisions in a general sense. I am told that nothing in the bill will result in any significant changes as a result of the legal profession uniform law. However, there will be the creation of what we now call consumer complaints, which will be available. I suspect the member may get to that in some detail—maybe not; I do not know. That consumer complaints provision obviously includes a capacity to deal with cost disputes and disciplinary matters in a way that has not previously been dealt with before.

Clause put and passed.

Clauses 203 to 205 put and passed.

Clause 206: Time for initiating disciplinary proceedings under Uniform Law s. 300 —

Hon MATTHEW SWINBOURN: I had an additional matter that I was meant to deal with. I will deal with it now.

The appeal rights of complainants have also changed. Currently, a complainant may seek review of the Legal Profession Complaints Committee's dismissal of disciplinary complaints as per section 435(1) of the Legal Profession Act. Under the legal profession uniform law, the ability of a complainant to seek review of the dismissal of a complainant by the legal services and complaints committee, the LPCC successor body, will be removed. However, the complainant will still be able to seek judicial review of the decision in the Supreme Court, although section 312 of the legal profession uniform law provides that the determination of a complaint or matter by the designated local regulatory authority is final except as provided by part 5.6. That must be read with clause 248 of the bill that provides that nothing in the legal profession uniform law will exclude or restrict judicial review by the Supreme Court of a decision of another court, tribunal, body or person. A complainant will also be able to seek an internal review of the decision; that will be available to them.

Hon NICK GOIRAN: I thank the parliamentary secretary for the clarification. We are still dealing with part 9 and specifically clause 206. Is there a time frame in which the board must make its decision?

Hon MATTHEW SWINBOURN: I am advised no, but currently there is also none under the current provisions for the board to make a decision.

Clause put and passed.

Clauses 207 to 215 put and passed.

Clause 216: Register of Australian practising certificates granted by the Board —

Hon NICK GOIRAN: We are on part 10 of the bill. Part 10 deals with the concept of registers. Specifically, there are two types of registers: certificate registers and disciplinary action registers. At the moment, there certainly is a certificate register, and people can go on the Legal Practice Board website and undertake a search that will indicate whether a Western Australian lawyer has a practising certificate, but there is also a search function of the database for those who are on the roll of practitioners. Will that remain the same, notwithstanding the passage of division 1?

Hon MATTHEW SWINBOURN: I think we are both familiar with what to do on the Legal Practice Board website to find a practitioner. My instructions are that the bill itself does not deal with that arrangement. If it is dealt with, it will be dealt with in regulations, but there is no intention to create a national register or anything of that type at this stage. It would be fair to say that that could progress in future years, because obviously more people will be coming on, and because the regulations could deal with that, those regulations could be changed. But at this stage, there is no intention to substantively change what is publicly available when looking for a practitioner and whether they are on the roll. It is a very useful resource for most people when they are looking for that, and obviously we both know there is a difference between being on the roll of practitioners and having a practising certificate. Being on the roll of practitioners does not create any rights. It does create some; it creates a whole heap of responsibilities, but no right to practise law without a practising certificate. From a practical point of view, I think that that will continue on in a form. If there is any change to it all, it will be only window-dressing, if I can call it that, because of the transition to the uniform law.

Hon NICK GOIRAN: Will it be the case, though, that if a person is practising law in Western Australia and they are admitted as a lawyer in New South Wales or Victoria, they will be able to practise in Western Australia because of this uniform scheme? But if someone wants to search for their credentials and that they actually are able to practise, they would need to then go to either the New South Wales or Victorian search engine because, presumably, the Western Australian Legal Practice Board one will continue to deal with those admissions in Western Australia?

The DEPUTY CHAIR: Members, noting the time, it may require the parliamentary secretary to answer at our next sitting to allow time for reporting and for our advisers to leave. I will leave the committee chair to allow for members' statements.

Progress reported and leave granted to sit again, on motion by Hon Matthew Swinbourn (Parliamentary Secretary).