LEGAL PROFESSION BILL 2007

Introduction and First Reading

Bill introduced, on motion by **Mr J.A. McGinty (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.A. McGINTY (Fremantle - Attorney General) [12.13 pm]: I move -

That the bill be now read a second time.

The Legal Profession Bill 2007 completes the legislative reform that the Parliament commenced when it enacted the Legal Practice Act 2003. At the time, the Legal Practice Act put Western Australia at the forefront of national reforms by allowing the formation of incorporated legal practices and multidisciplinary partnerships. It also brought Western Australia into the national practising certificate scheme and, for the first time, regulated foreign lawyers who practise foreign law in Western Australia. Since then, Western Australia has contributed to further reform of the regulation of the legal profession through its participation in the development of the national model bill on the legal profession. The national model bill was first publicly released on 4 May 2004 and, as Attorney General, I signed a memorandum of understanding committing Western Australia to adopting the provisions of the national model bill. This commitment will be met through the enactment of the bill currently before the house.

The need for a national approach to regulation is in recognition that the legal profession and legal services sector are increasingly adopting a national outlook. The major national law firms are well represented in Western Australia, and some local firms have offices or affiliations in other jurisdictions. Although there will always remain smaller firms and practices that operate solely in this state, serving the needs of a particular town or suburban area, the regulation of the legal profession must be undertaken in a way that is sufficiently flexible to balance the requirements of small, local firms and larger, national firms. The Legal Profession Bill achieves this.

The Legal Practice Act did not deal in substance in areas such as costs, admission, reservation of legal work, trust accounts, fidelity funds and complaints and discipline. This was in keeping with various recommendations of the 2002 national competition policy review of the Legal Practitioners Act 1893 and related legislation that reform in these areas be delayed until such time as a national approach had been determined. This outcome has now been achieved through the national model bill. The Legal Profession Bill deals with all of these areas of regulation as well as updating the provisions in relation to ILPs, MDPs, foreign lawyers and practising certificates.

The Legal Profession Bill follows the structure of the national model bill. Members will see that this bill is a substantially larger piece of legislation than the Legal Practice Act. This in part reflects the different drafting style that has been adopted but, more importantly, it reflects the fact that in an age where legal practitioners and their firms increasingly practise across state and territory borders, a more complex regulatory framework is required. For example, there are many provisions in the bill that will serve to allow Western Australian regulatory bodies to exchange information with and refer matters to their interstate counterparts.

The provisions of the national model bill are classified as follows: core uniform - a mandatory provision requiring textual uniformity; core non-uniform - a mandatory provision not requiring textual uniformity; and non-core - an optional provision. Because of the commitment to implement all core provisions - uniform and non-uniform - Western Australia has been required, on occasion, to follow some provisions that run counter to its preferred policy position. For example, in defining where a practice receives instructions from a client, the national model bill uses the location of the practitioner as the relevant criterion. Western Australia would prefer to use the location of the client, but this approach was not that adopted.

However, in developing model legislation it is to be expected that all jurisdictions would be required to accommodate some non-preferred provisions. Although the Legal Profession Bill takes a much more comprehensive and detailed approach to regulating the legal profession than does the Legal Practice Act, the overall character and ethos of the regulatory regime remains unchanged. Fundamentally, the bill retains the emphasis on protecting the interests of clients and the broader public. The bill sets high standards for legal practitioners, but none that is substantially different from those that already apply.

Nevertheless, there are some innovative changes contained in this bill. It does, for example, provide for "uplift" whereby a client and a legal practitioner can enter into a formal costs agreement that would enable the practitioner to charge a higher fee than they would otherwise if there is a successful outcome. There are safeguards such as the 25 per cent cap on the uplift if the matter is of a litigious nature; that is, the uplift fee must not exceed 25 per cent of the legal costs otherwise payable.

The prohibition on contingency fees remains; that is, those fees where the legal practitioner is paid a percentage of any award or settlement as their fee. This is in keeping with the recommendations of the Law Reform Commission of Western Australia's 1999 review of the criminal and civil justice system.

The bill also recognises that not all clients of legal practitioners require the same level of statutory protection. For example, in the area of costs disclosure, it is not necessary for legal practitioners to make the same level of disclosures to "sophisticated clients" as to other clients, "sophisticated clients" being public companies, government departments and the like. When the client is, for example, an ordinary person, the law practice is required to make a more detailed costs disclosure.

The bill retains the structural elements of the current regulatory framework; that is, legal practitioners will still be admitted to practice in this state by the Supreme Court and will be officers of that court. The Legal Practice Board will continue to be the primary regulator responsible for receiving and assessing applications for admission and the issuing of practice certificates. The Legal Practitioners Complaints Committee will continue to handle complaints in the first instance, and those of a more serious nature will continue to be referred to the State Administrative Tribunal for determination.

Until now, the legal contribution trust operated under its own legislation, the Legal Contribution Trust Act 1967. This act, however, is to be repealed and its provisions imported into the Legal Profession Bill 2007. This does not alter the status, role and functions of the trust. It simply means that all of the legislative provisions regulating the legal profession will be found in one act. The Legal Profession Bill will also modernise the governance of the system for professional indemnity insurance, or PII, for legal practitioners. It is compulsory for all legal practitioners to hold professional indemnity insurance before the Legal Practice Board can issue the practitioner with an annual practising certificate. The Legal Practice Act gives the Law Society of Western Australia the power to make arrangements with insurers to provide PII for the legal profession in this state. The Law Society established Law Mutual (WA) to manage and administer this function. The Legal Practice (Professional Indemnity Insurance) Regulations 1995 make certain exceptions to the requirement for practitioners to insure through Law Mutual. These exceptions include practitioners who are members of national incorporated legal practices that have taken out national insurance. The Law Society has, however, been concerned that the current system is not the most effective way to approach PII. Alternative models have been considered by the government, and this bill will introduce a new regulatory system for professional indemnity insurance. A special committee of the Law Society is to be established, and its membership can be drawn in part from outside the ranks of the Law Society and the legal profession - for example, accountants and others with a background in insurance. Members of the committee would be protected from liability. The Legal Profession Bill provides the necessary legislative backing for this reform.

The Legal Profession Bill again gives Western Australia the opportunity to be at the forefront in providing a modern regulatory framework for the legal profession that will safeguard consumers and also allow legal practitioners to operate in a more flexible business environment. The industries fuelling our booming economy require the support of an equally robust services sector. They require legal services to be provided by firms that are not hamstrung by outmoded legislation. The Legal Practice Act commenced the process of reform that has allowed Western Australian legal practices to incorporate and, in some instances, become public companies listed on the stock exchange. This innovative approach to business, still subject to appropriate levels of regulation, will enable the legal services sector in this state to continue to flourish. The Legal Profession Bill provides further impetus for this process.

I commend the bill to the house.

Debate adjourned, on motion by **Mr T.R. Sprigg**.