

LEGAL PRACTICE BILL 2002

Consideration in Detail

Mr J.A. McGINTY: I move -

That in relation to the Legal Practice Bill 2002, the amendments listed on the Notice Paper standing in the name of the Attorney General be made pro forma.

Mr R.F. JOHNSON: From the point of view of the Government, the Opposition and the Parliament, this is not good parliamentary practice. The Government brought in these Bills in October, and bringing in a whole sheath of amendments, as the Attorney General is doing, obviously means that the legislation was nowhere near ready in October. I suggest that to do justice to the House and to the parliamentary procedure the Attorney General should not bring Bills in until they are virtually ready. It is not a matter of a couple of amendments - there are pages and pages of amendments.

Question put and passed.

The amendments were as follows -

Clause 3.

Page 5, lines 5 to 7 - To delete the lines and substitute the following-

“legal practitioner” means a person -

- (a) who is admitted as a legal practitioner, whose name is on the Roll of Practitioners and who is not a disqualified person; or
- (b) who is an interstate practitioner who practises in this State;

Page 5, line 26 - To delete “same”.

Page 6, line 11 - To delete “of disclosure to clients” and substitute the following -
to clients, including disclosure

Page 7, line 17 - To delete “entity” and substitute the following -
body corporate

Clause 19.

Page 16, after line 12 - To insert the following -

- (2) The Board may, but is not required to, hold an inquiry as to whether a person seeking to be articulated to a legal practitioner is of good fame and character.
- (3) Section 41 applies to an inquiry under subsection (2) as if the inquiry were held under Part 5.
- (4) If the Board decides, upon inquiry under this section, that a person is not of good fame and character, that person must not be articulated to a legal practitioner.

Clause 20.

Page 16, after line 21 - To insert the following -

- (2) The Board may, but is not required to, hold an inquiry as to whether a legal practitioner should be approved under subsection (1)(c).
- (3) Section 41 applies to an inquiry under subsection (2) as if the inquiry were held under Part 5.

Clause 27.

Page 21, line 3 - To delete “can not” and substitute the following -
cannot

Page 21, line 10 - To insert after “rules” the following -
together with such other academic requirements, if any, as may be specified in the rules either generally or in respect of a degree in law of a university specified in the rules

Page 21, lines 15 and 16 - To delete “passed the examinations (if any)” and substitute the following -

satisfied the requirements for practical legal training

Page 21, lines 19 and 20 - To insert after “(if any)” the following -

, and satisfied the requirements for practical legal training,

Page 22, line 1 - To insert after “person” the following -

to do all or any of the following

Page 22, line 4 - To delete “or”.

Clause 28.

Page 22, after line 28 - To insert the following -

- (2) The Board may, but is not required to, hold an inquiry as to whether a person seeking a certificate under subsection (1)(c) is of good fame and character and fit and proper to be admitted.
- (3) Section 41 applies to an inquiry under subsection (2) as if the inquiry were held under Part 5.
- (4) If -
 - (a) a person fails to produce evidence required by the Board under subsection (1)(b) showing to the satisfaction of the Board that the person is of good fame and character and fit and proper to be admitted; or
 - (b) the Board decides, upon inquiry under subsection (2), that a person is not of good fame and character and fit and proper to be admitted,the Board may refuse to grant a certificate under subsection (1)(c).

Clause 30.

Page 23, line 15 - To delete “a superior court of”.

Page 23, line 16 - To delete “another State;” and substitute the following -
a superior court of another State; or

Page 23, line 17 - To delete the line.

Clause 31.

Page 23, lines 23 and 24 - To delete “legal practitioner” and substitute the following -
person

Page 23, line 24 - To insert after “admitted” the following -
as a legal practitioner

Clause 37.

Page 27, line 11 - To delete “the Board is satisfied that a legal practitioner” and substitute the following -

a legal practitioner satisfies the Board that he or she

Clause 39.

Page 29, line 21 - To insert after “clients;” the following -
or

Clause 40.

Page 30, line 18 - To delete “education or training of a specified type or types” and substitute the following -

and complete to the satisfaction of the Board continuing legal education or training of a type or types specified by the Board

Clause 47.

Page 34, line 3 - To delete “entity” and substitute the following -
body corporate

Page 34, after line 4 - To insert the following -

- (c) the only legal services that the corporation provides are services that -
 - (i) are not legally required to be provided by a legal practitioner; and
 - (ii) are provided by an officer or an employee who is not a legal practitioner;
- or

Clause 48.

Page 34, line 14 - To delete "entity" and substitute the following -
body corporate

Page 34, line 17 - To delete "entity contravenes this section" and substitute the following -
body corporate contravenes this section or a regulation made under this section

Clause 49.

Page 34, line 22 - To insert after "law" the following -
(whether of this State, the Commonwealth or any other State)

Clause 52.

Page 36, lines 13 and 14 - To delete the lines.

Clause 54.

Page 37, line 8 - To insert after "practitioner" the following -
or any other obligations of a legal practitioner under any law

Clause 58.

Page 38, line 22 - To insert after "services" the following -
as an officer or employee of the incorporated legal practice

Page 39, line 5 - To delete "entity" and substitute the following -
body corporate

Page 39, line 8 - To delete "entity" and substitute the following -
body corporate

Clause 59.

Page 39, line 24 to page 40, line 2 - To oppose the clause.

Clause 60.

Page 40, lines 8 and 9 - To delete "(other than legal services) or other business".

Page 40, line 10 - To delete "or conduct" and substitute the following -
(other than the provision of legal services, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise)

Page 40, line 13 - To insert after "services" the following -
, or other services in circumstances where a conflict of interest relating to the provision of legal services may arise

Clause 67.

Page 43, line 11 - To insert after "person" the following -
or a person who is the subject of an order under section 71 or 89

Page 43, line 14 - To delete "entity" and substitute the following -
body corporate

Clause 68.

Page 43, lines 23 to page 44, line 14 - To oppose the clause and substitute the following -

68. Investigative powers relating to incorporated legal practices
- (1) The regulations may make provision for or with respect to -
 - (a) audits conducted under section 69;
 - (b) investigations, and examinations under Part 10, relating to the trust accounts of an incorporated legal practice; and
 - (c) inquiries relating to a complaint made under this Act in relation to an incorporated legal practice.
 - (2) Without limiting subsection (1), regulations under that subsection may be made to extend powers conferred under this Act by reference to and modification of any of the provisions of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth relating to -
 - (a) examination of persons;
 - (b) inspection of books; and
 - (c) holding of hearings.

Page 44, lines 24 and 25 - To delete the lines.

Clause 70.

Page 45, after line 15 - To insert the following -

- (2) An order under this section may, if the Court thinks it appropriate, be made -
 - (a) subject to conditions as to the conduct of an incorporated legal practice;
 - (b) subject to conditions as to when or in what circumstances the order is to take effect; or
 - (c) together with orders to safeguard the interests of clients, employees and officers of the incorporated legal practice.

Page 45, lines 31 and 32 - To delete the lines.

Page 45, after line 32 - To insert the following -

- (3) A corporation that is disqualified from providing legal services in another State is taken to be disqualified from providing legal services in this State.

Clause 71.

Page 46, line 21 - To delete “disqualified” and substitute the following -
who is subject to a disqualification order

Page 46, line 23 - To delete “imposed” and substitute the following -
order made

Clause 74.

Page 48, lines 3 and 4 - To delete “exert any undue influence for the purpose of causing or inducing” and substitute the following -
cause or induce

Clause 75.

Page 48, line 14 - To insert after “services” the following -
as well as other services

Clause 76.

Page 48, line 19 - To delete “(other than an interstate practitioner)”.

Clause 77.

Page 49, line 9 - To insert after “partners” where it first appears, the following -
and employees who are legal practitioners

Clause 78.

Page 49, line 17 - To delete “a” and substitute the following -
the

Page 49, lines 30 and 31 - To delete the lines.

Clause 79.

Page 50, line 5 - To delete “that provides” and substitute the following -
where the partnership business includes the provision of

Page 50, lines 11 and 12 - To delete “conducting the business of a legal practitioner” and
substitute the following -

where the partnership business includes the provision of legal services

Clause 80.

Page 50, line 22 - To insert after “practitioner” the following -
, or any other obligations of a legal practitioner under any law,

Clause 82.

Page 51, line 31 - To delete “entity” and substitute the following -
body corporate

Page 51, lines 33 and 34 - To delete “or employee” and substitute the following -
, employee or related body corporate

Clause 83.

Page 52, lines 14 to 24 - To oppose the clause.

Clause 84.

Page 53, lines 2 and 3 - To delete “(other than legal services) or other business”.

Page 53, line 4 - To delete “or conduct” and substitute the following -

(other than the provision of legal services, or other services in circumstances where a
conflict of interest relating to the provision of legal services may arise)

Page 53, lines 7 and 8 - To delete “legal practitioners in connection with the provision of legal
services” and substitute the following -

in connection with the provision of legal services, or other services in circumstances
where a conflict of interest relating to the provision of legal services may arise

Clause 88.

Page 54, line 30 - To insert after “person” the following -
or a person who is the subject of an order under section 71 or 89

Clause 89.

Page 55, line 8 - To delete “or an interstate practitioner”.

Page 55, line 13 - To delete “the provision of legal services” and substitute the following -
a legal practitioner’s practice

Clause 90.

Page 56, lines 3 and 4 - To delete “exert any undue influence for the purpose of causing or
inducing” and substitute the following -

cause or induce

Clause 92.

Page 57, lines 11 to 13 - To oppose the clause.

Clause 110.

Page 68, line 29 - To delete “45” and substitute the following -

90

Clause 115.

Page 71, line 32 - To insert before “requests” the following -
in writing

Clause 128.

Page 79, line 30 - To insert after “practice” the following -
that has at least one legal practice director

Page 80, after line 3 - To insert the following -

- (3) An incorporated legal practice does not contravene subsection (1) because it ceases to have any legal practitioner directors if -
 - (a) a new legal practitioner director is appointed within the time prescribed by section 53(1); or
 - (b) an employee or other person is appointed under section 53(3) to exercise the functions of a legal practitioner director.

Page 80, line 9 - To delete “entity” and substitute the following -
body corporate

Clause 130.

Page 81, line 5 - To delete “permit or suffer” and substitute the following -
allow

Page 81, line 9 - To delete “, before any court”.

Clause 134.

Page 82, lines 21 and 22 - To delete “to engage in legal practice, knowing that the legal practitioner is not a certificated practitioner” and substitute the following -
who is not a certificated practitioner to engage in legal practice

Clause 136.

Page 83, line 28 - To delete “whom the legal practitioner knows to be” and substitute the following -
who is

Clause 146.

Page 90, line 5 - To delete “\$2 500” and substitute the following -
\$5 000

Clause 157.

Page 99, line 31 - To delete “\$2 500” and substitute the following -
\$5 000

Clause 159.

Page 101, line 12 - To insert after “made” the following -
by the Board

Page 101, after line 13 - To insert the following -

- (6) A legal practitioner who makes an application under subsection (4) must give the Board notice of the application.
- (7) An interested person who makes an application under subsection (4) in respect of a legal practitioner must give the Board and the legal practitioner notice of the application.

Clause 161.

Page 102, line 7 - To delete "\$2 500" and substitute the following -
\$5 000

Clause 180.

Page 114, line 2 - To delete "expense incurred by" and substitute the following -
costs of

Page 114, after line 4 - To insert the following -

(3) The Complaints Committee may take action under one or more of the paragraphs of subsection (2).

Clause 181.

Page 114, line 20 - To delete "another" and substitute the following -
any

Clause 185.

Page 117, line 6 - To delete "determination and" and substitute the following -
determination or

Page 117, line 8 - To delete "of the" and substitute the following -
of a

Clause 190.

Page 121, lines 8 to 12 - To delete the lines and substitute the following -
\$25 000 or the amount prescribed by the regulations, whichever is the greater; or

Clause 193.

Page 124, line 18 - To delete "another" and substitute the following -
any

Clause 194.

Page 126, line 7 - To delete "incurred by" and substitute the following -
of

Page 126, line 10 - To delete "expenses, including legal costs," and substitute the following -
costs

Clause 201.

Page 132, line 18 - To delete "\$2 500" and substitute the following -
\$5 000

Clause 207.

Page 134, after line 5 - To insert the following -
"outside this State" includes outside Australia;

Clause 218.

Page 141, after line 27 - To insert the following -

(2) Despite subsection (1), if a court or judicial officer is of the opinion that the amount of costs allowable in respect of a matter under a legal costs determination is inadequate because of the unusual difficulty, complexity or importance of the matter, the court or officer may do all or any of the following -

- (a) order the payment of costs above those fixed by the determination;
- (b) fix higher limits of costs than those fixed in the determination;
- (c) remove limits on costs fixed in the determination;

- (d) make any order or give any direction for the purposes of enabling costs above those in the determination to be ordered or taxed.

Clause 221.

Page 143, line 18 - To delete “at the Treasury” and substitute the following -

forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*

Page 143, lines 20, 21 and 22 - To delete the lines.

Clause 225.

Page 145, line 5 - To delete “petition or summons” and substitute the following -
summons or on a reference under section 238(2)

Clause 237.

Page 152, line 9 - To delete “that” and substitute the following -
than

Clause 244.

Page 154, line 15 - To insert after “with” the following -
which

Clause 255.

Page 163, line 7 - To insert after “conduct” the following -
and training

Page 163, line 16 - To delete “and examination” and substitute the following -
, examination and training

Page 163, after line 21 - To insert the following -

- (i) the accreditation of continuing legal education and training programmes, courses and providers;
- (j) information required to be provided to the Board by legal practitioners, the time, manner and form in which the information is to be provided, and the manner in which the information may be dealt with;

Page 164, lines 28 and 29 - To delete “incorporated legal practices and professional obligations related to those services” and substitute the following -

an incorporated legal practice or by a legal practitioner partner or employee of a multi-disciplinary partnership

Page 164, lines 30 to 32 - To delete the lines and substitute the following -

- (u) the provision of other services by or in connection with an incorporated legal practice or by a legal practitioner partner or employee of a multi-disciplinary partnership in circumstances where a conflict of interest relating to the provision of legal services may arise;
- (v) without limiting paragraphs (t) and (u), professional obligations relating to legal services provided by or in connection with an incorporated legal practice or a multi-disciplinary partnership;

Page 165, lines 6 to 10 - To delete the lines.

Clause 256.

Page 165, after line 29 - To insert the following -

- (3) The regulations may create offences and may provide for a penalty not exceeding \$5 000.

Schedule 2.

Page 170, line 3 - To delete “may continue” and substitute the following -
continues

Page 171, line 29 to page 172, line 2 - To delete the lines.

Schedule 3.

Page 174, lines 31 and 32 - To delete the lines.

Page 176, lines 11 to 18 - To delete the lines and substitute the following -

- (2) If a hearing under Part 12 is commenced and, upon the failure of a member present at that commencement to continue to participate in the proceedings, a quorum cannot be convened, the determination of the matter may be completed by the remaining members.