

# **LEGAL PROFESSION BILL 2004**

## **EXPLANATORY NOTES**

### **FOR**

### **AMENDMENTS TO BE MOVED IN COMMITTEE BY THE HONOURABLE THE ATTORNEY-GENERAL AND MINISTER FOR JUSTICE**

#### **General Outline**

##### **Title of Bill**

Legal Profession Bill 2004

##### **Objectives of the Amendments**

A number of amendments are proposed to the Bill:

- to provide for the commencement of certain provisions from assent;
- to clarify the operation of the Bill as it applies to government legal officers in certain respects;
- to provide for how certain information is publicly available;
- to clarify that a regulatory authority in setting fees may have regard to its general regulatory costs;
- to allow for a barristers' rule to prohibit a barrister from being a legal practitioner partner of a multi-disciplinary partnership;
- to clarify that an administration rule is a statutory instrument;
- to clarify the power of the disciplinary body to impose costs in connection with interlocutory or interim proceedings;

- to provide for the different arrangements to apply for practising certificates for solicitors and barristers for the 2004/2005 financial year;
- to ensure that the legal services commissioner can deal with files handed over by the legal ombudsman and do preparatory work on any complaint made before the commencement of Chapter 3;
- to repeal provisions relating to the legal ombudsman further to the appointment of the legal services commissioner; and
- to provide for amendments of a drafting or transitional nature.

### **Achievement of objectives**

These objectives are achieved by:

- providing for those sections of the Bill proposed to have effect from the later of the date of assent and 25 May 2004;
- clarifying that a government legal officer is engaged in government work when engaged in legal practice in the course of the officer's duties for the entity that employs or appoints the officer;
- allowing a government legal officer who is an Australian lawyer to call himself or herself a solicitor or barrister according to his or her previous admission or manner of practice;
- providing for certain information to be available publicly in a physical form or on the internet;
- clarifying that a regulatory authority in setting fees may have regard to its general regulatory costs and funding under the Act and that a fee is not unreasonable only because a fee is more than the cost of providing a specific service;
- allowing for a barristers' rule to prohibit a barrister from being a legal practitioner partner of a multi-disciplinary partnership;
- clarifying that an administration rule is a statutory instrument;
- limiting the power of the disciplinary body to impose costs in connection with interlocutory or interim proceedings;
- providing for the different arrangements to apply for practising certificates for solicitors and barristers for the 2004/2005 financial year;

- repealing provisions relating to the legal ombudsman further to the appointment of the legal services commissioner and ensuring that the commissioner can review files handed over by the legal ombudsman and do preparatory work on any complaint made before the commencement of Chapter 3; and
- providing for amendments of a transitional, minor, technical or drafting nature.

### **Alternatives to the Bill**

There are no alternative ways of achieving the policy objectives.

### **Administrative cost to Government of implementation**

There should not be any cost to government associated with the implementation of the amendments.

### **Consistency with Fundamental Legislative Principles**

Clause 643 of the Bill provides for a transitional regulation-making power in relation to the transition from the specified Acts, viz, *Queensland Law Society Act 1952* and the *Legal Practitioners Act 1995*, to the new Act. The clause is amended to ensure that, if the Act does not make adequate provision for a matter, the regulation can be made for the transition from a “relevant law” before commencement of the section to a “relevant law” after commencement and from a “relevant law” after that commencement to a “relevant law” in force from time to time after that commencement. The same justifications apply as outlined for the clause in the explanatory notes for the Bill.

### **Consultation**

A number of the amendments in committee have resulted from consultation with the Queensland Law Society and the Bar Association of Queensland, particularly concerning the transitional arrangements.

## NOTES ON PROVISIONS

*Amendment 1* provides for the commencement of specified provisions from the later of the date of assent and 25 May 2004.

*Amendment 2* clarifies when a government legal officer is engaged in government work.

*Amendment 3* allows a government legal officer who is an Australian lawyer to call himself or herself a solicitor or barrister according to his or her admission or manner of practice.

*Amendment 4* provides for the Brisbane Registrar of the Supreme Court to give directions to other registrars about the keeping of the local roll.

*Amendment 5* is a provision of a transitional nature. It allows persons permitted to engage in legal practice before the commencement of the new scheme to apply for a practising certificate as if they were Australian legal practitioners.

*Amendment 6* clarifies the power of a regulatory authority to impose a condition in relation to education, and training does not limit a regulatory authority's power to impose a relevant condition under an administration rule.

*Amendment 7* is an amendment of a drafting nature.

*Amendment 8* provides that a register is to be available publicly in a physical form or on the internet.

*Amendment 9* clarifies that a regulatory authority in setting fees may have regard to its general regulatory costs and funding under the Act and that a fee is not unreasonable only because it is more than the cost of providing a specific service.

*Amendment 10* is an amendment of a transitional nature to allow costs of the regulatory authorities in anticipation of the commencement of the new regulatory regime to be paid from the Legal Practitioner Interest on Trust Accounts Fund.

*Amendment 11* allows a barristers' rule to prohibit a barrister from being a legal practitioner partner of a multi-disciplinary partnership.

*Amendment 12* provides for the setting of fees, levies and contributions under an administration rule.

*Amendment 13* clarifies that an administration rule is a statutory instrument under the *Statutory Instruments Act 1992*.

*Amendment 14* provides for an administration rule to be publicly available in a physical form or on the internet.

*Amendment 15* limits the power of the disciplinary body to impose costs in connection with interlocutory or interim proceedings.

*Amendments 16 and 17* are of a minor technical nature.

*Amendment 18* provides in more detail for how different arrangements are to apply for practising certificates for solicitors and barristers for the 2004/2005 financial year.

*Amendment 19* is an amendment of a drafting nature.

*Amendment 20* provides for how the disclosure regime for show cause events operates for those applying for solicitors' practising certificates for the 2004/2005 year.

*Amendment 21* allows for the arrangements in respect of barristers' practising certificates from 1 July 2004, in particular, to allow a person to apply before the commencement of the new scheme and to allow for persons to pay in advance.

*Amendment 22* provides for the continuation of the existing Queensland Law Society rules and how they are to be amended, repealed and expired.

*Amendment 23* ensures that when the legal services commissioner receives a complaint from the legal ombudsman on the expiry of the operation of the legal ombudsman's office or between then and the commencement of the new complaints regime, for the Commissioner to be able to deal with the matter appropriately, including for preparation of the new scheme.

*Amendment 24* will allow complaints made before commencement of the new complaints scheme in Chapter 3 (including complaints made to the Legal Ombudsman and not finalised) to be dealt with in way that prevents duplication and unreasonable delay.

*Amendment 25* is an amendment of a drafting nature concerning commencement.

*Amendment 26* is an amendment of a drafting nature.

*Amendment 27* provides for the transitional regulation making power to apply to the transition:

- (a) from a relevant law, or other Act in relation to the legal profession, before the commencement of the section, to the operation of a relevant law, or another Act in relation to the legal profession, as in force from time to time after that commencement;
- (b) from the operation of a relevant law, or another Act in relation to the legal profession, from time to time after the commencement of the section, to the operation of a relevant law, or another Act in relation to the legal in relation to the legal profession as in force from time to time after that commencement.

*Amendment 28 to 30* are amendments of a drafting nature.