

LEGAL PROFESSION BILL 2004

AMENDMENTS AGREED TO IN COMMITTEE

1 Clause 2—

At page 32, line 7—

omit, insert—

‘(1) If the date of assent for this Act is on or before 25 May 2004, the following provisions commence on 25 May 2004 but, if the date of assent for this Act is not on or before 25 May 2004, the following provisions commence on the date of assent—

- chapter 1, other than the provisions that are in force
- sections 83 and 213
- chapter 2, part 9, division 3
- chapter 6, part 1, part 2, divisions 1 to 3, part 3, divisions 1 to 3 and part 5, divisions 1 to 4
- sections 586 and 587
- chapter 8, part 3 and part 5, division 1
- sections 602, 605, 610(3) and (6), 613, 617 and 638
- chapter 8, part 5, divisions 13 and 14
- schedule 5.’.

2 Clause 10—

At page 35, lines 30 to 32—

omit, insert—

‘(2) A government legal officer is **“engaged in government work”** when the government legal officer is engaged in legal practice in the course of the officer’s duties for the entity in relation to which the person is an employee or appointee.

Example of “engaged in government work”—

A public service employee employed by the Department of Justice and Attorney-General who is engaged in legal practice at the Department of Education and whose duties for the Department of Justice and Attorney-General while working at the Department of Education include providing advice to that department as a client of the Department of Justice and Attorney-General.’.

3 Clause 10—

At page 36, after line 21—

insert—

‘**(8A)** A government legal officer who is an Australian lawyer but does not hold a current local practising certificate may—

- (a) if the officer was admitted as a barrister before the commencement of section 25¹ or engages in government work in the manner of a barrister—call himself or herself a barrister or another term that describes the way the officer engages in government work; or
- (b) if the officer was admitted as a solicitor before the commencement of section 25 or engages in government work in the manner of a solicitor—call himself or herself a solicitor or another term that describes the way the officer engages in government work.’.

4 Clause 38—

At page 52, after line 25—

insert—

‘**(5)** Subject to the admission rules, the Brisbane registrar may give written directions to any other registrar about keeping the local roll.’.

1 Section 25 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

5 Clause 48—

At page 58, after line 10—

insert—

‘(8A) If an applicant was, immediately before the commencement of this section, lawfully engaged in legal practice in the manner of a barrister or solicitor, for subsection (2)(b) the applicant is taken to be an Australian legal practitioner at the time the person makes the application.’.

6 Clause 53—

At page 62, after line 13—

insert—

‘(4) A regulatory authority’s power to impose a condition mentioned in subsection (3) is not limited by, and does not limit, the regulatory authority’s power to impose a condition under an administration rule of the type mentioned in section 226(2)(b), (c) or (d).²’.

7 Clause 79—

At page 77, lines 9 and 10—

omit, insert—

‘(c) the regulatory authority believes there is any ground mentioned in section 67³ for which the local practising certificate is likely to be cancelled or suspended under section 68.⁴’.

2 Section 226 (Rules other than legal profession rule)

3 Section 67 (Grounds for amending, cancelling or suspending a local practising certificate)

4 Section 68 (Amending, cancelling or suspending local practising certificate)

8 Clause 82—

At page 79, lines 31 to 33—

omit, insert—

‘**(3)** A regulatory authority must ensure that an up-to-date version of its register is available, without charge, for public inspection—

- (a) at the authority’s principal place of business during normal working hours; or’.

9 Clause 83—

At page 80, lines 4 to 10—

omit, insert—

‘**(1)** A regulatory authority may charge fees for services that it provides, including, for example, the services provided by the authority as part of performing its functions under this Act.

Example of a service that a regulatory authority provides as part of performing its functions under this Act—

Granting or renewing a practising certificate.

‘**(2)** The fee for a service must be reasonable having regard to the cost to the regulatory authority of performing all of its functions under a relevant law and the funding that the authority has received under this Act, and a fee for a service is not unreasonable only because the particular fee is more than the cost of providing the specific service.

‘**(3)** The fees set by a regulatory authority must be included in an administration rule.’.

10 Clause 209—

At page 147, line 4, after ‘association’—

insert—

‘, including costs associated with implementing this Act whether incurred before or after the commencement of this section’.

11 Clause 217—

At page 151, after line 3—

insert—

‘(c) being a legal practitioner partner in a multi-disciplinary partnership.’.

12 Clause 226—

At page 155, lines 8 to 10—

omit, insert—

‘(g) setting fees, contributions and levies, other than levies imposed by the law society as mentioned in section 157,⁵ the payment of the fees, contributions and levies including the levies imposed by the law society under that section, and other matters relating to payments, including the timing and way of making payments;’.

13 Clause 226—

At page 155, after line 34—

insert—

‘(6) To remove any doubt, it is declared that each administration rule is a statutory instrument under the *Statutory Instruments Act 1992*.

Note—

Under the *Statutory Instruments Act 1992*, sections 24 and 25,⁶ an administration rule may provide for a fee in relation to specified exceptions and factors or different persons or matters.’.

5 Section 157 (Levy for benefit of fidelity fund)

6 *Statutory Instruments Act 1992*, sections 24 (Statutory instrument may be of general or limited application) and 25 (Statutory instrument may make different provision for different categories)

14 Clause 229—

At page 157, lines 24 to 26—

omit, insert—

‘A regulatory authority must ensure that an up-to-date version of each administration rule is available, without charge, for public inspection—

- (a) at the authority’s principal place of business during normal working hours; or’.

14A Clause 286—

At page 190, lines 22 to 25—

omit, insert—

‘(3) Without limiting subsection (2), a disciplinary body that makes an order under section 284 may make a further order requiring an Australian legal practitioner, in relation to whom the order under section 284 relates, to pay costs in relation to the order.’.

16 Clause 336—

At page 221, line 11, ‘authorise’—

omit.

17 Clause 527—

At page 305, line 17, ‘; and’—

omit, insert—

‘during normal working hours; or’.

18 Clause 602—

At page 349, lines 10 to 22—

omit, insert—

‘(1) The main purpose of this division is to provide for the transition from the system operating in Queensland before the commencement of this section to the system that is to operate after the commencement of chapter 2, part 4, namely before the commencement of this section—

- (a) persons who practised in the manner of a solicitor (“**solicitors**”) were required to hold practising certificates under the Queensland Law Society Act, as in force immediately before the commencement of this section, that were issued, generally speaking, for a financial year; and
- (b) persons who practised in the manner of a barrister (“**barristers**”) were not required to hold any practising certificates.

‘(2) The main purpose is to be achieved by making different arrangements for solicitors and barristers, including, for example—

- (a) provisions that require a solicitor’s practising certificate, issued under the Queensland Law Society Act as in force before the commencement of section 603, relating to the financial year starting on 1 July 2004 to be taken to be a local practising certificate under this Act; and
- (b) provisions that commence on the commencement of this section that will allow persons who wish to obtain a practising certificate from the bar association relating to the financial year starting on 1 July 2004, to apply before the commencement of chapter 2, part 4 and for the application to be dealt with under that part despite the fact the part has not commenced.

‘(3) To achieve this purpose, until the commencement of section 508,⁷ a reference in a provision of this Act to the law society, or to a regulatory authority that includes the law society, includes the law society as established at the time of the commencement of this section, if the context permits.’.

⁷ Section 508 (Establishment of Queensland Law Society)

19 Clause 604—

At page 351, line 4, after ‘section,’—

insert—

‘relating to the financial year beginning on 1 July 2004’.

20 Clause 604—

At page 351, lines 18 to 22—

omit, insert—

‘(5) Within 28 days after the commencement, a person mentioned in subsection (1) must give the law society a written statement—

- (a) about any show cause event in relation to the person that happened after the person was first admitted as a barrister, barrister and solicitor, legal practitioner, solicitor or solicitor and barrister, under an Act of this or another jurisdiction; and
- (b) explaining why, despite the event, the applicant is a suitable person to hold, or continue to hold, a local practising certificate.

‘(6) Subsection (5) applies whether or not the person has been granted a practising certificate, the person’s practising certificate has been renewed, or the law society must continue to deal with the person’s application.

‘(7) The law society must give a copy of a statement under subsection (5) to the commissioner.

‘(8) A contravention of subsection (5) is capable of constituting unsatisfactory professional conduct or professional misconduct.’.

21 Clause 605—

At page 351, lines 24 to 29 and page 352, lines 1 to 14—

omit, insert—

‘(1) The purpose of this section is to make arrangements in relation to the grant of practising certificates by the bar association that are different from the arrangements for the law society under sections 603 and 604 by, for example—

- (a) allowing persons who wish to obtain a practising certificate from the bar association relating to the financial year starting on 1 July 2004 to apply for the grant of a practising certificate before the commencement of section 44;⁸ and
- (b) persons who apply before that commencement, and other persons who apply before 28 days after that commencement for the grant of a practising certificate from the bar association relating to the financial year beginning on 1 July 2004, to practise as a barrister until this section provides otherwise or expires.

‘(2) Without limiting the *Acts Interpretation Act 1954*, section 17⁹—

- (a) a person who wishes to apply, before the commencement of section 44, for the grant of a practising certificate from the bar association relating to the financial year starting on 1 July 2004 may do so under chapter 2, part 4¹⁰ even though that part, other than section 83,¹¹ has not commenced; and
- (b) the bar association may deal with the application under chapter 2, part 4 and do other things for the purposes of dealing with the application even though that part, other than section 83,¹² has not commenced.

‘(3) Despite the commencement of sections 24 and 25,¹³ on and after the day of commencement of those sections (the “**commencement day**”), those sections do not apply to a person who, immediately before the commencement day, lawfully engaged in legal practice in this jurisdiction as a barrister, if the person—

- (a) has applied to the bar association for a practising certificate at any time before 28 days after the commencement day, whether the application was made before or after the commencement day; and

8 Section 44 (Main purposes of ch 2, pt 4)

9 *Acts Interpretation Act 1954*, section 17 (Exercise of powers between enactment and commencement)

10 Chapter 2 (Engaging in legal practice other than by Australian-registered foreign lawyers), part 4 (Legal Practice by Australian Legal Practitioners)

11 Section 83 (Regulatory authority may charge reasonable fees)

12 Section 83 (Regulatory authority may charge reasonable fees)

13 Sections 24 (Prohibition on engaging in legal practice when not entitled) and 25 (Prohibition on representing or advertising entitlement to engage in legal practice when not entitled)

- (b) the person engages in legal practice only to the extent that a person who is, after the commencement day, a barrister under this Act could engage in legal practice in this jurisdiction under this Act.

‘(4) A person who has applied for the grant of a practising certificate as mentioned in subsection (3)(a) is, on and after the commencement of section 44, taken to be the holder of a current practising certificate from the bar association until the earliest of the following happens—

- (a) the bar association grants a practising certificate to the person;
- (b) the bar association refuses to grant a practising certificate to the person;
- (c) a regulation, made under section 643,¹⁴ provides subsection (3) no longer has effect.

‘(5) This section expires 6 months after section 44 commences.’.

22 Clause 610—

At page 354, lines 24 to 28 and page 355, lines 1 to 21—

omit, insert—

‘(1) This section applies to the rules of the law society as in force immediately before the commencement of this subsection, including rules made under the Queensland Law Society Act, section 5A or 46,¹⁵ as in force immediately before the commencement, including the indemnity rules.

‘(2) Subject to subsection (5), the rules continue to have effect as subordinate legislation made under this Act and the Queensland Law Society Act even if the rules would have otherwise expired under the Queensland Law Society Act or the *Statutory Instruments Act 1992*, but the rules as continued may only be amended or repealed as mentioned in subsection (4).

‘(3) After the commencement of this subsection and despite the *Queensland Law Society Rule 1987*, rule 100(4), there is no need for a certificate issued and signed by autographical or mechanical means, as

14 Section 643 (Transitional regulation-making power)

15 Queensland Law Society Act, section 5A (Rules) or 46 (Governor in Council may make rules for purposes of this Act)

mentioned in the rule, to be initialled by the secretary or deputy secretary in order for that certificate to have full force and be valid.

‘(4) A regulation made under section 643¹⁶ may—

- (a) provide for the way a particular provision of the rules operates under this Act; or
- (b) amend a provision of the rules; or
- (c) repeal the rules, or part of the rules that continues to have effect under this section.

Note for subsection (4)—

When a legal profession rule, administration rule or law society rule is made about a matter, a regulation may need to be made to amend or repeal a provision of the rules that is continued and deals with that matter.

‘(5) Without limiting subsection (4)—

- (a) the *Queensland Law Society Rule 1987*, sections 82, 83, 114 and 121 are repealed; and
- (b) a reference in the *Queensland Law Society Rule 1987* to a practising certificate includes a practising certificate that, as mentioned in section 603,¹⁷ is taken to be a local practising certificate.

‘(6) The following rules made under the Queensland Law Society Act, as in force immediately before the commencement of this subsection, do not stop having effect on 30 June 2004 but continue to have effect, despite section 5A(9) of that Act and the *Statutory Instruments Act 1992*—

- (a) the *Queensland Law Society (Indemnity) Rule 1987*;
- (b) the *Queensland Law Society Rule 1987*.

‘(7) This section expires 1 year after subsection (1) commences.’.

16 Section 643 (Transitional regulation-making power)

17 Section 603 (Actions before commencement that continue to have effect)

23 Clause 613—

At page 357, lines 3 to 9—

omit, insert—

‘(1) The purpose of this section is to provide for the commencement of chapter 6, part 1¹⁸ before the commencement of section 256.¹⁹

‘(2) This section applies to the following—

- (a) a complaint made by a person under the Queensland Law Society Act before the commencement of this section, including a complaint mentioned in section 6AF of that Act, that has not been finally dealt with before the commencement of this section;
- (b) a complaint made after the commencement of this section and before section 256 commences about a person who engages in legal practice in the manner of a barrister or solicitor.

‘(3) Before the commencement of section 256, as the commissioner considers appropriate, the commissioner may—

- (a) do any preparatory work in relation to a complaint mentioned in subsection (2); and
- (b) for a complaint mentioned in subsection (2)(a)—perform functions and exercise powers under the Queensland Law Society Act, part 2B as if that part had not been repealed and a reference in that part to the legal ombudsman were a reference to the commissioner.’.

24 Clause 614—

At page 357, line 16, after ‘Act’—

insert—

‘but, subject to a regulation under section 643,²⁰ the commissioner may change the way the commissioner deals with the complaint if—

18 Chapter 6 (Establishment of entities for this Act, and related matters), part 1 (Legal Services Commissioner)

19 Section 256 (Making a complaint)

20 Section 643 (Transitional regulation-making power)

- (a) the commissioner considers the change appropriate because the complaint was made before section 256 commenced or applied to conduct that happened before that commencement; and
- (b) the change is to prevent duplication or unreasonable delay.’.

25 Clause 617—

At page 360, line 8, after ‘commencement’—

insert—

‘of this section’.

26 Clause 638—

At page 368, lines 12 and 13—

omit, insert—

‘(1) The Queensland Law Society Act, part 2B, is repealed and, on the repeal, the legal ombudsman goes out of office despite section 6AJ²¹ of that Act.’.

27 Clause 643—

At page 369, lines 15 to 22—

omit, insert—

- ‘(a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the change—
 - (i) from the operation of a relevant law, or another Act in relation to the legal profession, as in force before the commencement of this 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; or
 - (ii) from the operation of a relevant law, or another Act in relation to the legal profession, as in force from time to time after the commencement of this section to the operation of a relevant law, or another Act in relation to the legal

21 Queensland Law Society Act, section 6AJ (Duration of appointment)

profession, as in force from time to time after that commencement; and

- (b) for which this Act does not make provision or sufficient provision.

‘(1A) Without limiting subsection (1), the power to make a transitional regulation includes the power to provide for changes under this Act to the law at different times.’.

28 Schedule 2—

At page 399, line 7—

omit, insert—

‘ before the commencement of section 628²²’.

29 Schedule 4—

At page 403, line 14, ‘in this Act’—

omit, insert—

‘under this Act, including in rules continued in force under the Legal Profession Act, section 610,²³’.

30 Schedule 4—

At page 406, line 12—

omit, insert—

‘15 Part 2C—’.

22 Section 628 (Main purposes of ch 8, pt 5, div 11)

23 Legal Profession Act, section 610 (Continuation of rules of the law society)