

LEGAL PROFESSION BILL 2003

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 2003

Objectives of the Legislation

A number of amendments are proposed to the Bill to ensure that:

- any Australian lawyer has a right to complain about the conduct of a government legal officer where the Bill currently restricts that right to regulatory authorities and the chief executive of the relevant department or agency.
- there is a requirement for the Legal Services Commissioner to make an annual report for tabling in the Legislative Assembly;
- various regulatory entities can share information for the purpose of the exercise of their functions.

There are also some minor technical amendments to the *Coroners Act 2003* and the *Cremations Act 2003*. Some amendments are for changed cross references to sections in the *Magistrates Act 1991* following renumbering as a result of the *Magistrates Amendment Act 2003*. The amendments also omit the “de facto partner” and “spouse” definitions because the issue is now addressed in the *Acts Interpretation Act 1954*, as amended by the *Discrimination Law Amendment Act 2002*.

Achievement of objectives

These objectives are achieved by:

- amending clause 173 of the Bill to ensure that Australian lawyers have a right to complain about the conduct of a government legal officer;
- requiring the Legal Services Commissioner to make an annual report for tabling in the Legislative Assembly;
- allowing the board, law society, bar association or the commissioner to exchange information for the purposes of their functions under a relevant law;
- ensuring that the offence of improper disclosure of information extends to information obtained in the administration of the Act rather than just information under chapter 3;
- omitting of interpretive provisions relating to de facto partners and spouses from the *Coroners Act 2003*;
- making amendments of a 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***Retrospective operation (Legislative Standards Act 1992, s4(3)(g))***

Amendment 1 provides for amendment 14 to commence on 30 November 2003. If the Bill is not assented by that date, it will have retrospective operation. This is justified by the fact that the amendment is only to ensure that an unnecessary provision is omitted and cross references to other legislation are correct from the commencement of the *Coroners Act 2003* on 1 December 2003.

Immunity from proceeding or prosecution without adequate justification (Legislative Standards Act 1992, s4(3)(h))

Clause 376C relocates previous clause 229. It provides that no liability attaches to various persons with regulatory responsibilities under the Act for acts or omissions made honestly and without negligence. As advised in the explanatory notes for the Bill, it is based on the draft national model laws for the regulation of the legal profession being developed through the Standing Committee of Attorneys-General, is of limited effect and is necessary for the administration of the Act.

Consultation

Given the subject matter and technical nature, these amendments have not warranted additional consultation.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 of the Bill to provide for the amendments to the *Coroners Act 2003* and the *Cremations Act 2003* included in these committee amendments to commence on 30 November 2003.

Amendment 2 is of a technical drafting nature.

Amendment 3 amends clause 173 of the Bill to ensure that Australian lawyers have a right to complain about the conduct of a government legal officer.

Amendment 4 is a cross reference change consequential upon amendments 6 and 13.

Amendment 5 requires the Legal Services Commissioner to make an annual report for tabling in the Legislative Assembly;

Amendment 6 omits clause 228 which is replaced by new clause 376B under amendment 13.

Amendment 7 omits clause 229 which is replaced by new clause 376C under amendment 13.

Amendments 8 to 11 are of a technical drafting nature.

Amendment 12 ensures that the restrictions on disclosure of information in suitability reports do not apply to information given to or obtained by an admissions board or regulatory authority other than as part of a suitability report.

Amendment 13 inserts the new clauses 376A to 376C. New clause 376A allows the board, law society, bar association or the commissioner to disclose information to one another for the purposes of their functions under a relevant law. New Clause 376B which replaces clause 228 extends the offence of improper disclosure of information to information obtained in the administration of the Act rather than just information under chapter 3. Clause 376C is previous clause 229 relocated.

Amendment 14 inserts some minor technical amendments to the *Coroners Act 2003* and the *Cremations Act 2003*. Some amendments are for changed cross references to provisions in the *Magistrates Act 1991* following amendments in the *Magistrates Amendment Act 2003*. Other amendments are consequential upon the commencement of the “de facto partner” definition in the *Acts Interpretation Act 1954*, as inserted by the *Discrimination Law Amendment Act 2002*.

Amendment 15 corrects a reference.