

LEGAL PROFESSION AMENDMENT BILL

Statement of compatibility

Mr HULLS (Attorney-General) tabled following statement in accordance with Charter of Human Rights and Responsibilities Act:

In accordance with section 28 of the Charter of Human Rights and Responsibilities Act, I make this statement of compatibility with respect to the Legal Profession Amendment Bill 2007.

In my opinion, the Legal Profession Amendment Bill 2007, as introduced to the Legislative Assembly, is compatible with the human rights protected by the charter. I base my opinion on the reasons outlined in this statement.

Overview of bill

The bill amends the Legal Profession Act 2004 to enact national model provisions agreed by the Standing Committee of Attorneys-General for the regulation of the legal profession. The provisions improve the rights of consumers of legal services as well as ensuring that the regulation of the legal profession is consistent with other Australian jurisdictions.

Human rights issues

1. Human rights protected by the charter that are relevant to the bill

Section 13: Privacy and Reputation

A person has the right:

- (a) not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have his or her reputation unlawfully attacked.

Clause 70 of the bill substitutes a new section 5.6.6 into the principal act. This new provision raises the right not to have privacy unlawfully or arbitrarily interfered with.

The provision will require 'authorised deposit-taking institutions' (ADIs) to disclose to an external intervener the bank account details of associates of law practices and third parties. An external intervener may be appointed by either the Supreme Court or the Legal Services Board to intervene in a law practice where there are serious issues of financial mismanagement.

The external intervener may require access to bank account details held by an ADI in the course of conducting their investigation. This may have implications for the privacy of the associates of a law practice and in limited circumstances, third parties who are not associates of the law practice.

Whilst it is relevant to consider the human right relating to privacy, the provision is not considered to unlawfully or arbitrarily interfere with the right because of the criteria set out in the new section, namely:

the ADI does not have to disclose the information to the external intervener unless the intervener produces evidence of their appointment

there are additional criteria for requiring disclosure of a third party's bank account details. This is that the external intervener has reasonable grounds to believe that trust money has, without the authorisation of the person who entrusted the money to the law practice, been deposited into the account of the third party.

Consequently, the bill is compatible with the right to privacy.

2. Consideration of reasonable limitations -- section 7(2)

The bill does not limit any human right and therefore it is not necessary to consider section 7(2) of the charter.

Conclusion

I consider that the bill is compatible with the Charter of Human Rights and Responsibilities because it raises human rights issues but does not limit human rights.