

## DRAFT SECOND READING SPEECH

HON ELISE ARCHER MP

### *Legal Profession Amendment (Validation) Bill 2019*

*\*check Hansard for delivery\**

Madam Speaker, I move that the Bill now be read a second time.

This Bill seeks to clarify the range and type of persons or organisations that the Minister for Justice can invite to make application for grants of money from the excess funds in the Solicitors' Guarantee Fund.

The Bill is not intended to broaden the range of persons and organisations from those who are traditionally invited to apply, rather it seeks to amend the Act to clarify that the persons and organisations who can make applications for grants are those that provide legal or legal-related assistance, services, or advice, and includes instrumentalities of the Crown.

The Bill also contains an amendment that validates certain past decisions to invite and/or approve grants from the excess funds in the Solicitors' Guarantee Fund. This validation is required for decisions dating from at least 2011.

The Solicitors' Guarantee Fund (commonly known as the SGF) is continued under section 358 of the *Legal Profession Act 2007*, having been previously established under the *Legal Profession Act 1959*.

The SGF is comprised mainly of interest generated by the monies standing to the credit of legal practitioner's trust funds – that is, client funds being held, usually temporarily, by law firms. The SGF does not hold government funds.

The SGF is administered and managed by the Solicitors' Trust (the Trust). The Trust is an independent statutory body comprised of two legal practitioners and an accountant.

Under section 358 of the *Legal Profession Act 2007*, the SGF is to be applied by the Trust for the purposes of compensating clients of legal practitioners who have defaulted on their fiduciary duties, to cover the costs of the operation of the Legal Profession Board and Disciplinary Tribunal and for expenses incurred in the administration of the SGF. The SGF is also to be applied to other purposes approved by the Minister for Justice under section 361.

Section 361 of the Act allows the Minister for Justice to approve grants of money from the SGF where the SGF exceeds the prescribed minimum threshold, which is currently \$8.7 million (*Legal*

*Profession Regulations 2018*, regulation 69) taking into account ascertained and contingent liabilities.

Under section 36I, the Trust must advise the Minister that the SGF has exceeded the prescribed amount. On receipt of that advice, the Minister may invite certain parties to make application for a grant of money from the SGF.

The Act currently provides that the Minister may invite the following parties to make an application:

- (a) the Legal Aid Commission of Tasmania or such other legal assistance scheme as the Minister may approve;
- (b) the Law Foundation of Tasmania; and
- (c) any other person.

Section 36I(5) provides that the Minister may approve a grant of money from the SGF and may specify conditions under which the grant is made.

Over a number of years, government bodies and related organisations such as the Magistrates Court, the Director of Public Prosecutions, and the Sentencing Advisory Council have received grants for the funding of research or legal services that substantially improve access to justice, on the understanding that they came within the scope of section 36I(2)(c) of the Act.

Applications for grants have always been invited and approved on the basis that these bodies came within the scope of the words “any other person” in section 36I(2)(c).

It is a matter of public record that similar grants have been made on this basis in the past, over a number of years by successive governments. For example, payments from the SGF were made by a previous government between 2011 and 2013 to:

- the Sentencing Advisory Council, for various projects including data collection on sentencing of sexual assault offenders;
- the Office of the Anti-Discrimination Commissioner (as it was then known), for various projects including skills development for alternative dispute resolution, schools diversity education and training and development;
- the Magistrates Court, for the Hobart Specialised Youth Justice Court pilot evaluation report; and
- the Department of Justice, including for a UTAS Linkage Project.

Concerns have recently been raised about whether the language in the Act is clear in terms of the intended recipients of funds from the SGF.

The amendments to the Act made by this Bill provide certainty as to the persons and organisations that can apply for and receive grants from the SGF.

The Bill amends section 36I to provide that the Minister for Justice may invite applications from and/or approve grants to relevant persons.

The phrase *relevant person* is defined to include:

- a Government Agency;
- a court, tribunal or similar person or body acting judicially;
- a person or body, however constituted, that provides legal services or other law related assistance or services and/or advice, or opinions, recommendations or reviews, on legal or law related matters affecting the State; and
- such other persons or bodies as may be prescribed.

Relevant person also includes the Legal Aid Commission of Tasmania and the Law Foundation of Tasmania.

As I have said, the Bill is not intended to broaden the range of persons and organisations from those who are traditionally invited to apply, rather it seeks to amend the Act to clarify the scope of the existing provision.

The validating provision in the Bill provides that past applications made in respect of, or approvals of, a grant of money are not invalid only because:

- they related to persons or bodies that provided legal services, or other law related assistance or services, other than as part of a legal assistance scheme;
- the person or body was a relevant person; and/or
- the body was not a person.

The proposed amendments confirm and validate past practices in relation to grants. In effect, the amendments mean that any past applications or grants are not invalid so long as the relevant person or organisation would be eligible to apply for and receive a grant under the new amended version of section 36I.

I commend the Bill to the House.