



Legal Profession Uniform Law Application Bill 2014

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Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [3.44 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

I am pleased to introduce the New South Wales application bill for the Legal Profession Uniform Law. This bill will apply the provisions of the Legal Profession Uniform Law as a law of New South Wales, as well as provide supporting provisions for the regulation of the legal profession in this State.

The Legal Profession Uniform Law is a piece of nationally developed legislation which was recently passed by the Victorian Parliament.

The Uniform Law was originally developed under the auspices of the Council of Australian Governments [COAG] from 2009 to 2011 with the aim of delivering harmonised regulation of the legal profession across all States and Territories. The COAG established this project as part of its microeconomic reform agenda under the National Partnership to Deliver a Seamless National Economy.

New South Wales is proud to be a launch partner of this important regulatory initiative which will deliver benefits for individual lawyers, law firms and consumers of legal services alike. Victoria and New South Wales will continue to encourage other States and Territories to sign on to these reforms so the benefits can be enjoyed on a truly national basis.

Since 2011, Victoria and New South Wales have continued to improve the COAG taskforce's legislative package and have made a range of changes to simplify its administration and substantially reduce regulatory costs. These changes also ensure that existing regulatory structures at the local level can continue to be used to provide the efficient and effective delivery of regulatory services.

Many of these changes were made in response to feedback from other States and Territories through the Standing Council on Law and Justice, as well as the Council of Chief Justices.

The Uniform Law aims to simplify and standardise regulatory obligations, cutting red tape for law firms, especially those operating across participating jurisdictions, while still providing for a significant degree of local involvement in the performance of regulatory functions.

The principles of co-regulation, with involvement for the profession in critical areas of regulatory responsibility, are preserved, while consumers of legal services will also benefit from greater consistency of experience across jurisdictions and from improvements to consumer dispute resolution processes.

The Uniform Law provides for the establishment of two new bodies that will set policy and ensure consistent application across participating jurisdictions, being a Legal Services Council and an Admissions Committee, together with a Commissioner for Uniform Legal Services Regulation. The offices of these bodies will be located in Sydney, although the council will draw its membership from both New South Wales and Victoria.

The Attorneys-General of the participating jurisdictions will act jointly as a "Standing Committee" in relation to various aspects of the scheme.

The Uniform Law, and the bodies established under it, will continue to provide for the profession's involvement in a co-regulatory model.

In addition to a formal role in nominating members of the Legal Services Council and Admissions Committee, the Law Council of Australia and Australian Bar Association will have a legislatively enshrined role under part 9.2 of the Uniform

Law to develop Uniform Rules relating to legal practice, legal professional conduct and continuing professional development, for solicitors and barristers respectively.

At the local level, as I will explain shortly, the Law Society of New South Wales and the New South Wales Bar Association will continue to play a critical role in administering critical parts of the Uniform Law within New South Wales.

I do not propose to give a detailed summary of the functions of the council and commissioner or other bodies under the Uniform Law, as they are well documented in the second reading speech of the Victorian Attorney General when he introduced the Uniform Law into the Victorian Parliament.

However, I will briefly outline some of the key benefits of this multi-jurisdictional regulatory scheme:

- Economic benefits will flow to all parts of the legal profession, big and small, as a result of shorter, less complex and uniform legislation. This includes law practices that practise in a single jurisdiction only. Well over 500 pages of legislation/regulation will be reduced to just 200 pages.
- Lawyers will practise seamlessly across jurisdictions under uniform legislation and regulatory standards, which replace disparate legislation, regulations and rules across the participating jurisdictions. This will reduce compliance costs for firms operating across New South Wales and Victoria, particularly firms in the border towns of Albury and Wodonga. For example, those firms will be able to maintain a single costs agreement for both States and the same trust account management software.
- The legal profession will also have a direct role in the formulation of the regulatory standards through nomination of members of the Legal Services Council and the Admissions Committee.
- For consumers, the benefits will be several:
 - o Consumers will enjoy the same protections, rights and remedies across participating jurisdictions.
 - o Consumers will have access to new low-cost and informal ways to resolve service complaints with law practices. A tailored set of consumer friendly orders will give consumer access to the kinds of practical remedies they need—like a simple apology or an order that work be redone at reduced cost.
 - o The legislative duty on law practices to charge fair and reasonable costs and new, streamlined costs disclosure requirements will foster better communication and lead to fewer disputes.
 - o Billing practices have been strengthened to ensure that principals are responsible for the legal costs charged by their law practices.
- For the courts, applications for admission will continue to be processed at the local level, but under Uniform Rules developed by the new statutory Admissions Committee. Applicants will know well in advance what standards they will need to meet to be admitted in either New South Wales or Victoria.

I will now turn to the specific provisions of the application bill before this place.

Part 1 includes provision for commencement of the application bill. It is intended that only those parts of the bill and the Uniform Law that are necessary to establish the new regulatory authorities and frameworks for making Uniform Rules will be commenced initially. The substantive provisions of the Uniform Law and this bill, which will repeal the Legal Profession Act 2004, will not commence until the Uniform Rules are in place. At this stage this is not expected to occur until after 1 January 2015.

Part 2 includes a number of provisions relating to the application of the Uniform Law as a law of New South Wales. In particular, section 4 of the bill applies the Legal Profession Uniform Law, which is set out in schedule 1 to the Legal Profession Uniform Law Application Act 2014 of Victoria as an Act of New South Wales.

The Uniform Law provides for the direct conferral of most of its substantive regulatory functions on local regulatory authorities within each participating jurisdiction. Section 11 of this application bill designates a responsible local authority for each Uniform Law function. These designations are intended to preserve the functions that those regulatory bodies currently carry out. For example:

- The Law Society and Bar Association will continue to issue practising certificates.
- The Law Society and Bar Association will continue to have oversight of practitioners trust accounting and business practices.
- The New South Wales Legal Services Commissioner will have complaint handling functions. The Law Society and Bar Association will also handle complaints about practitioners under delegation from the New South Wales Commissioner.
- The New South Wales Legal Services Commissioner, the Law Society and Bar Association will have powers to investigate practitioners and law practices for the purposes of matters such as complaints investigation and compliance auditing.

- The Legal Profession Admission Board will continue to carry out functions in relation to the admission of lawyers in New South Wales.

It is also important to note that, like the 2004 Act, the Uniform Law preserves the inherent jurisdiction of the Supreme Court to admit and discipline lawyers.

Part 3 of the application bill provides institutional arrangements for the local regulatory authorities that will perform functions under the Uniform Law. In particular, it provides for the New South Wales Legal Profession Admission Board and the New South Wales Legal Services Commissioner. It also provides for the functions of the New South Wales Bar Association and Law Society of New South Wales under the Uniform Law.

Part 4 relates to practising and registration certificates. It includes a number of provisions that support the substantive provisions of the Uniform Law in relation to practising and registration certificates for lawyers in New South Wales, including provisions for the setting of fees for the issue of such certificates by the Law Society and Bar Association. The part also contains a number of provisions relating to government lawyers in New South Wales.

Part 5 of the bill provides for the Public Purpose Fund and for statutory deposits to be made to the fund from interest payable on general trust accounts. As is currently the case, the Public Purpose Fund will remain as a source of funding for regulatory activities undertaken by regulatory authorities in New South Wales as well as providing a source of funding for activities of more general public benefit, such as Legal Aid.

Part 5 also contains provision for the trustees of the Public Purpose Fund to approve payments from the fund to cover New South Wales's liability in relation to the costs of the Legal Services Council and Commissioner for Uniform Legal Services Regulation in the event that revenue from admission fees is insufficient to cover that liability.

The Uniform Law provides for jurisdictional legislation to deal with matters relating to the assessment of costs. Part 6 of the bill includes provisions carried over from the Legal Profession Act 2004 relating to particular kinds of legal costs. Division 1 authorises costs to be fixed by regulation. It is intended that the schedules of costs in the current Legal Profession Regulation 2005 will be remade following the repeal of the Legal Profession Act 2004. Division 2 of Part 6, and schedule 1 to the bill, relate to the maximum costs in personal injury matters. Division 3, and schedule 3 to the bill, relate to costs in civil claims where there are no reasonable prospects of success.

Part 7 relates to costs assessment. The Uniform Law provides for matters relating to costs assessment to be provided under jurisdictional legislation. The provisions of the bill have modified the existing costs assessment provisions to give the Costs Assessment Rules Committee greater power over practice and procedure relating to costs assessment.

Part 8 relates to Professional Indemnity Insurance [PII] and provides a mechanism for the approval of Professional Indemnity Insurance policies for practitioners by the Attorney General. This part also retains the provisions of the Legal Profession Act 2004 in relation to the Solicitor's Mutual Indemnity Fund. This fund exists for the purposes of covering liabilities arising from the collapse of HIH and it is important these provisions are carried over to facilitate the resolution of a small number of pending claims.

Part 9 relates to fidelity cover and provides for the Legal Practitioners' Fidelity Fund and its management. The provisions in part 9 supplement the substantive provisions of the Uniform Law relating to contributions to the Fidelity Fund and claims on the fund where a law practice defaults. Barristers are excluded from these provisions, which maintains the current position.

Part 10 carries over the provisions in the Legal Profession Act 2004 regulating mortgage practices. These longstanding provisions restrict solicitors' mortgage practices due to previous experience with the disproportionate impact of claims on the Fidelity Fund because of solicitors' dishonest and fraudulent activity relating to mortgage practices.

Part 11 contains provisions relating to the procedures of the Civil and Administrative Tribunal when exercising functions in connection with disciplinary matters. The Uniform Law provides that matters of procedure in the tribunal are a matter for jurisdictional legislation.

Part 12 provides for various registers of information about current and former practitioners to be kept by the Law Society, Bar Association and Legal Services Commissioner. The Uniform Law provides that the Legal Services Council may keep a register of lawyers, but it also provides that local regulatory authorities can keep registers. The provisions in part 12 substantially reproduce the provisions of the Legal Profession Act 2004 and ensure that the regulatory authorities will be able to maintain the registers they currently keep.

Part 13 contains a number of miscellaneous provisions, including provisions enabling regulations to be made, provisions providing protection from liability for persons carrying out functions under the application bill and a re-enactment of provisions from the Legal Profession Act 2004 preventing the appointment of Queen's Counsel and official schemes for recognising seniority or status of legal practitioners by the Crown in New South Wales.

There are a small number of areas in the Uniform Law in which variations between the provisions enacted in each jurisdiction are contemplated. As my counterpart in Victoria noted in relation to the Victorian implementation bill, Victoria has made minimal modification to the uniform law.

I am also pleased to say that New South Wales's implementation of the Uniform Law minimises any variation from the substantive requirements of that law.

New South Wales also intends to make regulations exempting some of those current government lawyers who do not hold a practising certificate from the Uniform Law's requirement for government lawyers to have practising certificates.

The current Act allows government lawyers to practise without having been admitted. As some of these lawyers gained their qualifications a number of years ago, they would no longer be able to rely upon their degrees to obtain admission. Government lawyers whose qualifications might be considered "stale" by the Legal Profession Admission Board will remain exempt from the requirement to hold a practising certificate.

New South Wales also intends to preserve an exception allowing registered industrial organisations to provide free legal services to their members. This exemption allows for a number of unions and professional associations in New South Wales who rely on it to provide services to their members.

Conclusion

Along with Victoria, the New South Wales Government is pleased to lead the implementation of this important reform to the regulation of the legal profession as it continues to expand into new markets.

I would like to acknowledge the significant contributions to the development of this legislation made by the stakeholders in New South Wales, in particular the New South Wales Bar Association and Law Society of New South Wales, the Office of the Legal Services Commissioner, the Legal Profession Admissions Board and the Supreme Court.

There are several individuals within those organisations who have tirelessly contributed to the development of harmonised professional regulation for a decade or more. Their commitment, and their stamina, to this goal are to be admired.

I would also like to acknowledge the support from the profession in New South Wales and recognise the important role that the professional associations have had in progressing the reforms to this point.

These are significant and complex reforms. As has been the case with the implementation of other national schemes, it is likely to be necessary to bring further consequential amendments before the Parliament.

These future amendments may include some more substantive matters. For example, the Supreme Court has been reviewing the costs assessment process which is dealt with in part 7 of the application bill. It is expected that implementation of the final recommendations of this review will require some further legislative change. It is also possible that once the Legal Services Council and commissioner begin their work in drafting the Uniform Rules, they may request corrections or improvements to the Uniform Law or the New South Wales application Act.

The Uniform Law offers the prospect of significantly reduced interstate barriers to seamless national legal practice, while improving consumer protections and safeguarding an independent legal profession.