

**LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2021**  
**LEGAL PROFESSION UNIFORM LAW APPLICATION (LEVY) BILL 2021**

*Third Reading — Cognate Debate*

**HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary)** [4.11 pm]: I move —

That the bills be now read a third time.

**HON NICK GOIRAN (South Metropolitan)** [4.12 pm]: I rise on behalf of the opposition to speak to the third reading of the package of bills—that is, the Legal Profession Uniform Law Application Bill 2021 and the Legal Profession Uniform Law Application (Levy) Bill 2021. The first of the two bills in this package is massive. It is some 225 pages in length and has 421 clauses. The version of the bill that was agreed to by the house after the second reading is not the version of the bill that we are now agreeing to. I think seven or eight amendments were made by the Committee of the Whole House during our further scrutiny of the bill. I want to get on the record my thanks, on behalf of the opposition, to the parliamentary secretary representing the Attorney General. In particular, it was evident that he had access to some excellent hardworking advisers and I think it was disclosed during the course of our scrutiny that those advisers had been involved in this project for quite some time. I want to thank all of those involved for not only the improvements that have been made to the bill as a result of the work of the house of review, but also I think the genuine way in which consideration was given to some of the concerns that were raised. It was the position of the opposition at the time of the second reading that we would support the bill but that we would be seeking answers from the government about the concerns raised by stakeholders. It is important for us now to take a moment to reflect on what those concerns were at the time of the second reading and whether they have now been addressed courtesy of the work done by the Committee of the Whole House and the improvements that have been made to the bill by the seven or eight amendments that were agreed to by the house.

We are adopting a uniform scheme that will substitute the existing laws regulating the legal profession in Western Australia. In substitution for what exists at the moment, we will have the third iteration of this bill. The bill that passed at the second reading stage was 31–2 so, in effect, what we are agreeing to here is the third iteration of this bill. It will substitute the existing law regulating the legal profession. The new law will, in the main, be the law that applies to legal practitioners in New South Wales and Victoria. The primary concern of Western Australian key stakeholders in the lead-in to the second reading of the bill—in particular, the Law Society of Western Australia and the Legal Practice Board—was to obtain certainty about the commencement date of the new laws and the new scheme. Why that was important to the stakeholders at the second reading stage was to enable the legal profession in our state to be consulted about the as yet un-drafted regulations and also to enable the final law to be adequately communicated and therefore known by the legal profession. I am pleased to report that the Committee of the Whole House process revealed a number of things. Firstly, during our scrutiny of clauses 1 and 2 of this 421-clause bill, a commitment was extracted from the government that this new scheme would not commence any sooner than 1 July 2022. I thank the government for making that clear. The parliamentary secretary made that clear on a number of occasions and I think that it, in part, alleviates the concerns of stakeholders that the law was going to start as soon as 1 January this year and there was talk about a date of 1 April. Nevertheless, there still remains precious little time between now and 1 July for that consultation process to occur on the regulations and for the new laws to be adequately communicated to the legal profession so that it is known what law they need to comply with as at 1 July, if that is indeed to be the start date for the new scheme. In any event, what we know as a result of the work of the Committee of the Whole House is that the new law will not commence any sooner than 1 July 2022.

The second of the five matters that I wish to report that was revealed by the Committee of the Whole House process is that there was and, I regret to inform, there remains, certainly in my view, a concern with the so-called no double jeopardy provision. Clause 12 of the bill is entitled “No double jeopardy” but the parliamentary secretary I think helpfully described it at one point as a no double punishment clause. I think that that description probably better characterises clause 12 of the bill. It remains my concern that the clause, as it is currently drafted and has been agreed to by the Committee of the Whole House, and which will shortly be agreed to by this chamber as we read the bill for the third time, is too narrow. It potentially does not provide sufficient protection for legal practitioners in Western Australia. That said, there was perhaps not adequate time or perhaps it was not the adequate forum during the Committee of the Whole House to properly investigate all the scope of double jeopardy laws in Western Australia, particularly the rights that might exist under the common law. Nevertheless, I remain concerned about the drafting of clause 12. I encourage the government to take up this issue with the other states when it sits around the table of the standing committee and considers any further amendments into the future. I seem to recall that the parliamentary secretary helpfully brought to our attention that the bill contains a statutory review clause, and that will provide an opportunity for these things to be considered. As I turn now to the index, I note that that provision is found in clause 256.

The third of the five matters that I will report pertains to clause 142. I think it is fair to describe that there was a concession by the government that clause 142 will partly dilute an existing right of local clients—that is, the clients of Western Australian practitioners—as, under the present law, they have a right to have disclosed to them

their right to apply for a costs assessment. This existing right will not remain once this bill passes in a few moments' time. That is a shame. It has been brought to the attention of the government. In fairness to the government, it conceded that that is an issue. We can only hope that the seventeenth recommendation of the Legal Services Council, which has been agreed to by not only our government but also the New South Wales and Victorian governments, which also sit around the table of the standing committee, will address this issue. The Legal Services Council has already identified that this is a problem with the uniform law and suggested that there be an amendment. My concern is that we are already ahead of that in Western Australia. This right is currently enshrined for Western Australian clients. In a moment's time, we will take that away from Western Australian clients, hoping that, in due course, the amendment will be made to the uniform law. I think that is a shame. That said, it is not a catastrophic problem. The parliamentary secretary helpfully brought to our attention that when a bill is issued to what I have referred to as a local client, the invoice from the practitioner to the client must identify that they have a right to a costs assessment.

The fourth of the five matters that I bring to the attention of the house pertains to clause 219. It was under this clause that I recommended that the government consider prescribing particulars that must be included in the disciplinary register, in particular, a list, indication or note of the sanction or penalty issued against the relevant legal practitioner. We could call that the punishment. This goes back to my earlier point about the so-called no double jeopardy clause, which is clause 12. If we at least had in the disciplinary register a list of the punishment or sanction applied against the practitioner, it would alert the three relevant jurisdictions that they simply could not take action against that practitioner because to do so would be contrary to clause 12 of the Legal Profession Uniform Law Application Act 2022, as the bill will become. I thank the government for indicating that it will give active consideration to that when it prepares the regulations between now and what we assume will be 1 July this year.

The last of the matters that I draw to the attention of the house is clause 229. I understood from the work undertaken in the Committee of the Whole House that this clause will give investigators, for the first time, the clear statutory power to use force in their investigations. That is a scenario that should always enliven the minds of Legislative Councillors, particularly because we know that a very experienced body like the Western Australia Police Force has from time to time had officers fall foul of the use of force and been found to have excessively used that force. It was good and comforting to hear from the parliamentary secretary that such actions by these investigators with these new powers will, as a minimum, be subject to oversight from the Corruption and Crime Commission, which will be in a position to receive such complaints.

With all those remarks made, I commend the package of bills to the house and once again thank the parliamentary secretary and the advisers for facilitating their passage.

Questions put and passed.

Legal Profession Uniform Law Application Bill 2021 read a third time and returned to the Assembly with amendments.

Legal Profession Uniform Law Application (Levy) Bill 2021 read a third time and passed.