

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

Cognate Debate

Leave granted for the Legal Profession Uniform Law Application Bill 2021 and the Legal Profession Uniform Law Application (Levy) Bill 2021 to be considered cognately, and for the Legal Profession Uniform Law Application Bill 2021 to be the principal bill.

Second Reading — Cognate Debate

Resumed from 4 August 2021.

HON NICK GOIRAN (South Metropolitan) [4.09 pm]: I rise on behalf of the opposition to speak to the second reading cognate debate on the Legal Profession Uniform Law Application Bill 2021 and the Legal Profession Uniform Law Application (Levy) Bill 2021. As shadow Attorney General, I welcome the gradual transition from jurisdictional restriction to a national concept of legal practice. The first of the two bills—that is, order of the day 11—will formalise the concept to facilitate and regulate cross-jurisdictional legal practice, at least for Victoria, New South Wales and Western Australia. If this leads to greater competition and better legal services for clients in our state, it has my support. However, we must remain vigilant to ensure that it will not be to the detriment of newly admitted Western Australian legal practitioners. It has been the case for some time now that the number of law graduates in our state has exceeded available positions in law firms, and we do not want to see that situation worsen.

In considering this package of bills, we of course have at our disposal the 136th report of the Standing Committee on Uniform Legislation and Statutes Review. As I recall, the committee provided five recommendations in its report of October last year. Those five recommendations are as follows. Recommendation 1 states —

The Legislative Council delete Standing Order 67(1) of the Standing Orders of the Legislative Council and replace it as follows:

For the purpose of this Standing Order, a “regulation” includes any instrument made subject to disallowance by a written law.

Recommendation 2 states —

The Parliamentary Secretary responsible for the Bill does not move the third reading of the Legal Profession Uniform Law Application Bill 2021 until Legislative Council Standing Order 67(1) is amended in the terms set out in Recommendation 1.

Members may recall that recommendations 1 and 2 have indeed been actioned. Recommendation 3 reads —

The Legal Profession Uniform Application Bill 2021 be amended as follows:

Clause 8

Page 8, line 19 – To delete “Assent.” and insert:

Assent and upon being laid before each House is taken to be published under this Act.

Members will note that that recommendation sits on the supplementary notice paper 31, issue 2, for their consideration. I invite the parliamentary secretary in his reply to give an early indication of the government’s position on that one statutory recommendation, noting that the rest of the supplementary notice paper consists of amendments proposed by the government. Recommendation 4 states —

The Parliamentary Secretary explain to the Legislative Council:

- the persons or classes of persons who may be exempt from whole or part of the provisions of the Act;
- the types of discretions that may be conferred on a person and in what circumstances; and
- the types of conditions which may be imposed or authorised to be imposed and the circumstances of those conditions

which could be prescribed by local regulation pursuant to clauses 251(2)(d) and 251(3)(b) and (c) of the Legal Profession Uniform Law Application Bill 2021.

It will be no surprise to the hardworking parliamentary secretary that I foreshadow that I will indeed be asking him to do that when we get to clause 251 in Committee of the Whole House. The fifth and final recommendation in the report reads —

The second reading speech or Explanatory Memorandum for a bill should identify any Henry VIII clause in that bill, provide a rationale for it and explain its practical effect.

I seem to recollect that the Attorney General may have interacted with the committee on that particular issue, and we can unpack that when we get to the relevant clause of contention. As I say, we do have the benefit of that report as we consider this package of bills before us.

Members will be aware that in the customary way the second bill is a levy bill, dealing with, I would argue, the tax that will be imposed with respect to this matter. Members will also be aware that the explanatory memorandum mentions that various stakeholders were identified, and that the legal profession in Western Australia, the Legal Practice Board of Western Australia, the Legal Profession Complaints Committee of Western Australia, the Law Society of Western Australia and the Western Australian Bar Association, together with many other stakeholders contributed to the development of this legislation. It will be useful when we consider this bill in greater detail for the government to have at its disposal what exactly was the nature of those consultations and whether any concerns were raised by stakeholders, particularly those that were not then addressed in the version of the bill before us.

I want to specifically note that the Law Society wrote to the Attorney General about this bill in October 2021, at the time requesting an urgent meeting with the key stakeholders to seek to move the then anticipated commencement date from 1 January 2022 to 1 April 2022. When the Law Society made that advocacy, it provided the reason —

- The Regulations and Rules are yet to be finalised and there has to date been no consultation on either.

Parliamentary secretary, it will be useful to know to what extent any rules or regulations are now finalised. From experience, it is highly unlikely that they are finalised, but has any work commenced on that; and, if so, what consultation has occurred with said stakeholders?

The Law Society also indicated that —

- From the date of proclamation, we understand that there are changes to the conduct rules, CPD rules and how firms deal with costs agreement and costs disclosure and broadly speaking there has been limited communications and/or CPD provided to educate the Western Australian legal profession on these changes in 2021. The date of 1 April also enables the implementation of professional education on the Legal Profession Uniform Law prior to the end of the CPD deadline of 31 March.

Again, it will be important to know whether that remains the case, because this advocacy was made in October 2021 and it is now 24 February 2022. Will the new time frame still apply when there seems to be some appetite to provide continuing professional development to the legal profession prior to 31 March? Even if this bill were miraculously to be passed today, which realistically is not going to happen, that leaves only a month in which this professional development can occur prior to 31 March. Noting that we are next scheduled to sit, I think it is, in or around 15 March and assuming that the government maintains the current order of priority of bills, it still would not leave that much time. For any stakeholder who might be agitated or annoyed about the fact that this bill will not be passed today, I might indicate that it was brought on about 10 minutes ago, at about 4.10 pm, on the final sitting day of this fortnight.

Hon Alannah MacTiernan interjected.

Hon NICK GOIRAN: It is on the list, Minister for Regional Development. I have no problem that it is being brought on now. I make the observation that the first time it was brought on was at 4.10 pm on the final Thursday of the sitting fortnight.

Hon Matthew Swinbourn interjected.

Hon NICK GOIRAN: I totally agree with the parliamentary secretary. For the benefit of Hansard, who may not have picked up that very useful interjection, he was identifying the sheer size of the bill, which is 224 pages. That is, of course, one of the two bills in the package before us, which has some 421 clauses. As I said, it is unrealistic to expect that the legislation will pass this afternoon when we basically have some 20 minutes before question time and then another 20 minutes after question time before the house adjourns. That was the only point I was making. The Minister for Regional Development is quite right that the matter is on the list, and there is no objection on my part that it has been raised at the first opportunity in accordance with that list. I, of course, question why this bill was listed before the bill that we dealt with earlier in the week and last week, that highly controversial piece of legislation, which, even if the government wanted it passed, could not possibly be considered more time sensitive than this bill. If members do not agree with that, have a chat with the Law Society of Western Australia and debate with it whether the Courts Legislation Amendment (Magistrates) Bill 2021 somehow had a higher priority than the matter now before us. As the Law Society indicated as far back as October last year, the Legal Profession Uniform Law Application Bill 2021 has some time line difficulties if the government expects the profession to undergo any professional education prior to the continuing professional development deadline of 31 March. No doubt the government will have considered all those matters, including when it expects this scheme to come into effect. The Law Society continued to say —

- It would be unfortunate if the legal profession were to be advised as late as December that a new Bill will take effect from 1 January 2022. Furthermore, this is too short a timeframe to introduce a new regulatory

framework for the legal profession. This is further compounded by the business sector shut down during the December/January period.

That concern that the Law Society raised has been addressed because the government decided not to bring on the bill at the end of last year; it is bringing it on now. The original date of 1 January is no longer of any concern. I might say tongue in cheek that this government has some form in passing legislation retrospectively, but I do not think there is any suggestion that this legislation will take effect from 1 January 2022. Removing the tongue from my cheek, I return to what the Law Society had to say. At the end of its advocacy, it stated —

- Finally, it is not clear how any transitional provisions would alleviate these concerns.

Perhaps the parliamentary secretary could indicate to the house in his reply or, alternatively, during the consideration of clause 1, what consultation transpired between the government, the Law Society and the other stakeholders since October last year when these concerns were raised.

I draw to members' attention that on 25 November the Law Society received the following response from the Attorney General, which, in part, included these remarks —

The LPUL Bill has passed the Legislative Assembly and it is hoped it will pass the Legislative Council prior to Christmas.

I pause there to remind members that that communication was from the Attorney General to the Law Society on 25 November. Presumably, with a serious tone, he replied to the Law Society and seriously indicated that he hoped that the bill would pass the Legislative Council prior to Christmas. The Law Society is no mug. It was following exactly what was going on at the end of last year with respect to the government's legislative agenda. I note in passing that the amendments to the Administration Act continue to languish on the government's agenda.

On 25 November, the Attorney General went on to say —

However, given the uncertainties about the timing of when Parliament may pass the Bill, the Attorney General has agreed to defer the proposed 1 January 2022 commencement date. The Attorney General will consult with stakeholders when deciding on the new commencement date. Any new commencement date will be subject to the LPUL Bill first passing Parliament.

I give the parliamentary secretary some notice of the questions that will be asked, including at clause 1. If the Law Society received that response from the Attorney General on 25 November, it follows that there must have been some consultation between the Attorney General and the stakeholders about the new commencement date on or after 25 November. Therefore, my questions will be: On what dates did those consultations take place? Who was consulted? What was the outcome of that consultation on the new commencement date? The most important point being whether there was unanimous agreement on the setting of the new commencement date. If there was, that is great, and we can move on from that concern. However, if one or more stakeholder has expressed concern about the new proposed commencement date, the opposition would like to know who that stakeholder is and the nature of their concerns.

As I said, I also want to mention in passing a letter from the Law Society of 1 December 2021. I think the parliamentary secretary and the Attorney General are very familiar with this letter. It is an open letter to members of the Legislative Council, so each member will have received this on 1 December last year. It deals with two bills that, interestingly, are still before us. It is the package of bills that we are discussing and also the Administration Amendment Bill 2021. The Law Society had this to say about the Legal Profession Uniform Law Application Bill 2021 and the Legal Profession Uniform Law Application (Levy) Bill 2021 —

The Law Society has through its website been advising its members and the wider profession that on 23 June 2021 the Legal Profession Uniform Law Application Bill was reintroduced into the Legislative Assembly, following its lapsing before the 2021 State election and that the anticipated commencement date for the Uniform Law was to be 1 January 2022.

The Law Society hoped that these important reforms would be passed through the WA Parliament without delay. Unfortunately, this has not been the case and the Attorney General has been left with no option other than to again change the anticipated commencement date of 1 January 2022 as both the Legal Profession Uniform Law Bill 2021 (Bill) and the Legal Profession Uniform Application (Levy) Bill 2021 (Bills) are yet to be passed in the Legislative Council.

The Uniform Legislation and Statutes Review Committee tabled their report on the Legal Profession Uniform Law Bill 2021 (Bill) in the Legislative Council on 12 October 2021. However, both Bills are as at today's date listed at items 13 and 14 on the Legislative Council Daily Notice Paper, "Orders of the Day" and all indications are that both will not be enacted this year given the Legislative Council's last sitting day is on 9 December 2021.

The Law Society requests that the Legislative Council pass these Bills this year

It then lists the three bills and the letter is signed by the then president of the Law Society.

I simply note that there seems to have been an absence of proper consultation with key stakeholders. If there has been any consultation, we would like to know precisely what has occurred, including any consultation with the legal professions in the other two jurisdictions with which we are effectively going to be joining forces. I conclude by saying that the opposition will support the bills but we will seek answers from the government about concerns raised by stakeholders in Committee of the Whole House.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [4.29 pm] — in reply:
I know that I have a very short amount of time in which to address a number of matters raised by Hon Nick Goiran. From the outset, what is more likely is that probably most of the matters he has raised will be dealt with at the committee stage. It is a long bill with a lot in it. It has a long genesis as well. I am not sure that any reply I can give would give full justice to the matters the member raised. We might be able to explore those further in committee. We will be able to deal with that then.

Debate interrupted, pursuant to standing orders.

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