

LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, read a first time.

Second Reading

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.14 pm]: I move —

That the bill be now read a second time.

It gives me great pleasure to introduce the Legal Profession Uniform Law Application Bill 2021. In 2004, Hon Jim McGinty, MLA, then Attorney General, signed a memorandum of understanding that committed Western Australia to adopting the provisions of the national model bill on the legal profession. When the Legal Profession Bill 2007 was introduced into Parliament in 2007, Hon Jim McGinty stated —

The need for a national approach to regulation is in recognition that the legal profession and legal services sector are increasingly adopting a national outlook.

That bill followed the structure of the national model bill.

In April 2009, the commonwealth Attorney-General set up the National Legal Profession Reform Taskforce to prepare draft uniform legislation to regulate the legal profession in Australia. A draft legal profession national law was presented to the Council of Australian Governments but the project lacked support from states and territories.

In December 2013, Victoria and New South Wales entered into a bilateral agreement on the legal profession uniform framework, and legislation was enacted in both Victoria and New South Wales to give effect to the agreement. The Victorian Legal Profession Uniform Law Application Act 2014 and the New South Wales Legal Profession Uniform Law Application Act 2014 were enacted in March 2014 and May 2014 respectively. The Legal Profession Uniform Law is schedule 1 to the Victorian act and that schedule is applied as a law of New South Wales. The uniform law scheme came into operation in Victoria and New South Wales in July 2015.

The regulatory authorities for the uniform law scheme are the standing committee, the Legal Services Council, the Commissioner for Uniform Legal Services Regulation and the admissions committee. The standing committee consists of the Attorneys General of each participating jurisdiction. The Commissioner for Uniform Legal Services Regulation is responsible for the operation of the Legal Services Council and has an important oversight role in promoting compliance with the requirements of the uniform law and the uniform rules and ensuring their consistent and effective implementation. The admissions committee is responsible for the admission rules.

In 2017, the state government commenced negotiations with Victoria and New South Wales, with a view to joining the uniform law scheme and, in 2019, an intergovernmental agreement was signed by Victoria, New South Wales and Western Australia. The intergovernmental agreement gives effect to the agreement reached between the parties for Western Australia to join the uniform law scheme. In September 2019, the Victorian Legal Profession Uniform Law Application Amendment Act 2019 was given royal assent. That act officially accommodates Western Australia's entry into the uniform law scheme in line with the intergovernmental agreement. The amendments made by the act to the uniform law scheme enable Western Australia's participation in the scheme's governance arrangements. First, the number of members of the Legal Services Council has been increased to include one additional member appointed on the recommendation of the Law Council of Australia and one additional member appointed on the recommendation of the standing committee. Second, the standing committee must ensure that at least one member of the Legal Services Council is drawn from Western Australia. Third, Western Australia will be able to have a judicial member on the admissions committee.

In order to join the uniform law scheme, Western Australia must also enact legislation to apply the Legal Profession Uniform Law set out in schedule 1 to the Victorian act as a law of Western Australia. This bill will apply that schedule as a law of this state, subject to minor modifications concerning professional indemnity insurance. The bill also contains provisions that supplement and complement the Legal Profession Uniform Law in the same way as in the Victorian and New South Wales application acts. Although the bill will repeal the Western Australian Legal Profession Act 2008, many of the existing features of the Legal Profession Act have been retained to the extent that those provisions are compatible with the Legal Profession Uniform Law. This is because the uniform law scheme accommodates local variations in the way in which participating jurisdictions operate. The local variations are accommodated in this bill.

The annual operating costs of the Legal Services Council are currently shared by Victoria and New South Wales. Any direct funding contribution is funded in accordance with each participating jurisdiction's proportion of the total number of legal practitioners to whom practising certificates were issued in the previous financial year unless the standing committee agrees otherwise. Each party individually determines how it will meet any future funding

obligations that arise with direct funding contributions. Western Australia will be expected to share the operational costs when it joins the uniform law scheme in accordance with the intergovernmental agreement. The triennial operating budget of the Legal Services Council has to be unanimously approved by the standing committee. Western Australia's funding contribution will be significantly less than that of Victoria and New South Wales because Western Australia has significantly fewer legal practitioners than those states.

In the second reading speeches for the Victorian and New South Wales application acts, the Attorneys General said —

The uniform law aims to simplify and standardise regulatory obligations, cutting red tape for law firms, especially those operating across 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 key regulatory requirements.

The Attorneys General then identified some of the key benefits of the scheme. First, they noted that lawyers will be able to practise seamlessly across jurisdictions under uniform legislation and regulatory standards rather than disparate legislation and that this will reduce compliance costs for firms operating across participating jurisdictions. Second, they highlighted the benefits for consumers and observed —

- Consumers will enjoy the same protections, rights and remedies across participating jurisdictions.
- 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 consumers access to the kinds of practical remedies they need—such as a simple apology or an order that work be done at a reduced cost.
- 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.
- Billing practices have been strengthened to ensure that principals are responsible for the legal costs charged by their law practices.

Third, the Attorneys observed that 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 each participating jurisdiction.

I now turn to the bill itself. Part 2 of the bill applies the Legal Profession Uniform Law, the uniform regulations and uniform rules as laws of Western Australia. This part also specifies the designated local regulatory authorities and the designated tribunals for the purposes of the Legal Profession Uniform Law. The Legal Practice Board and the Legal Services and Complaints Committee are designated local regulatory authorities. The Supreme Court and the State Administrative Tribunal are designated tribunals.

Part 3 of the bill makes provision for the establishment of local authorities that will perform functions under the act and the Legal Profession Uniform Law. These local authorities are the Legal Practice Board, the Legal Services and Complaints Committee, the Legal Services and Complaints Officer, the Legal Costs Committee and the Legal Contribution Trust. These local authorities currently perform functions under the Legal Profession Act 2008.

Part 4 of the bill contains provisions relating to admission, practising certificates and registration certificates that will supplement the provisions of chapters 2 and 3 of the Legal Profession Uniform Law. This part also contains provisions relating to government lawyers in Western Australia and the functions of the State Solicitor.

Part 5 of the bill contains provisions relating to trust accounts, which support the provisions of part 4.2 of the Legal Profession Uniform Law.

Part 6 of the bill relates to legal costs, particularly legal costs determinations and costs assessments. This part supplements part 4.3 of the Legal Profession Uniform Law. Legal costs determinations will continue to be made by the Legal Costs Committee in the same way as under the Legal Profession Act 2008. Costs assessments will continue to be undertaken by taxing officers of the Supreme Court, referred to as costs assessors.

Part 7 of the bill concerns professional indemnity insurance and supports part 4.4 of the Legal Profession Uniform Law. As far as possible, the current arrangements and schemes for professional indemnity insurance under the Legal Profession Act 2008 have been retained, together with the law mutual fund. To ensure the current arrangements are not undermined by Western Australia's entry into the Legal Profession Uniform Law scheme, modifications have been made to the Legal Profession Uniform Law. Such modifications ensure that professional indemnity insurance provided in accordance with the bill is an approved insurance policy for the purposes of the Legal Profession Uniform Law and limit the exemptions from the requirement to hold professional indemnity insurance that are applicable to national law firms.

Part 8 of the bill relates to fidelity cover. Again, as far as possible, the current arrangements in respect of fidelity cover under the Legal Profession Act 2008 will be retained, together with the Solicitors' Guarantee Fund. A statutory obligation will no longer be imposed upon authorised deposit-taking institutions, or ADIs, to pay interest on trust accounts to the Legal Contribution Trust. Instead, interest must be paid in accordance with arrangements made between the ADI and the Legal Contribution Trust.

Part 9 of the bill contains provisions relating to proceedings under the Legal Profession Uniform Law and, in particular, disciplinary proceedings in the State Administrative Tribunal. These provisions complement chapter 5 of the Legal Profession Uniform Law insofar as that chapter relates to professional discipline.

The Legal Practice Board currently maintains registers and publicises disciplinary action under the Legal Profession Act 2008. Part 10 of the bill makes provision for various registers to be kept and maintained by the board and for the publication of information about disciplinary action. These registers are the register of local practising certificates, the register of local registration certificates and the register of disciplinary action. I note that under part 9.3 of the Legal Profession Uniform Law, the Legal Services Council may maintain an Australian legal profession register.

Part 11 of the bill relates to enforcement and contains provisions about search warrants and contraventions of the act or the Legal Profession Uniform Law. This part supports chapter 7 of the Legal Profession Uniform Law.

The Law Society Public Purposes Trust Act 1985 is to be repealed, as set out in part 15 of the bill. However, part 12 of the bill requires an authorised ADI to pay interest on trust accounts to the Law Society and for that money to be applied in accordance with the Law Society public purposes trust deed.

Members may recall that in 2016, the law libraries of the then Department of the Attorney General and the Supreme Court were amalgamated to form one library at the David Malcolm Justice Centre. This law library is owned and operated by the state for the use of the judiciary, local lawyers and other prescribed persons. Part 13 of the bill continues the current arrangements relating to the law library, save that the provisions relating to the law library contribution by the board are contained in a separate bill, the Legal Profession Uniform Law Application (Levy) Bill 2021, which some members might remember.

Part 14 of the bill contains miscellaneous provisions, including provisions for the making of local regulations, provisions relating to local approved forms under the act, powers of delegation, and a statutory review provision.

Part 15 of the bill provides for the repeal of the Legal Profession Act 2008 and the Law Society Public Purposes Trust Act 1985.

Parts 16 and 17 of the bill contain transitional provisions and consequential amendments to other acts respectively.

Following on from the Legal Profession Act 2008, this bill continues to set high standards for legal practitioners in Western Australia and promotes the interests of clients. When Western Australia officially joins Victoria and New South Wales in the uniform law scheme, the scheme will operate in respect of 77 per cent of the legal profession in Australia. I acknowledge the support of the legal profession, 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 who have contributed to the development of this legislation.

Pursuant to Standing Order 126(1), I advise that this bill is a uniform legislation bill. It is a bill that ratifies or gives effect to an intergovernmental or multilateral agreement to which the government of the state is a party.

I commend the bill to the house, and I table the explanatory memorandum.

[See paper [430](#).]

Debate adjourned and bill referred to the Standing Committee on Uniform Legislation and Statutes Review, pursuant to standing orders.

House adjourned at 7.26 pm
