LEGAL PROFESSION UNIFORM LAW APPLICATION BILL 2020
LEGAL PROFESSION UNIFORM LAW APPLICATION (LEVY) BILL 2020

Cognate Debate — Motion

Leave granted for the Legal Profession Uniform Law Application Bill 2020 and the Legal Profession Uniform Law Application (Levy) Bill 2020 to be considered cognately, and for the Legal Profession Uniform Law Application Bill 2020 to be the principal bill.

Second Reading — Cognate Debate

Resumed from 18 March.

MR P.A. KATSAMBANIS (Hillarys) [4.33 pm]: It is a pleasure to rise to speak on the cognate debate of the Legal Profession Uniform Law Application Bill 2020 and the Legal Profession Uniform Law Application (Levy) Bill 2020. These are extremely important bills for not only the legal profession, but also, just as importantly—this is the real reason we are doing this in this chamber—for clients of legal practitioners, or consumers of legal services. The Liberal Party will support this legislation, which builds on a long line of attempts to bring the legal profession under some form of consistent and now uniform regulation across our nation. For over a century, state Parliaments have guarded the regulation of professional services very closely. We know that the corporations power has given federal Parliament significant lawmaking powers over the regulation of business across Australia, but the regulating of professions, such as the legal profession, was always seen as the province of the states, and we have done so since before Federation.

Over the years, and particularly since the 1980s, we have seen the development of, firstly, national firms and then, later, international firms. We have seen perhaps most poignantly over the past 15 to 20 years, the entry of multinational firms into our legal services market to replace the national firms that had built up through mergers of state-based firms in the past. Analogous to that, of course, we have seen a lot of changes in the law itself, blurring of the lines between jurisdictions, significant travel by people across state and international borders, and significant business dealings across state borders. Many years ago, we moved to the more united process—I hesitate to use the word "uniform"—or the nationally consistent process that the Attorney General referred to in his second reading speech with the creation of the Legal Profession Act. That was the culmination of a lot of agreements between state governments and the federal government at a COAG or Attorneys General level—or whatever acronyms were used at the time to describe the getting together of that group of senior legal officers from state and federal Parliaments. Over the last decade or so, we have seen a further move from nationally consistent regulation to the concept of uniform regulation of the legal profession across the nation.

At the moment, under our more consistent act, practitioners are admitted to practise in Western Australia in the Supreme Court and they are issued with a practising certificate as a Western Australian practitioner. Practitioners in Victoria or New South Wales used to be issued with a Victorian or New South Wales certificate. I think South Australia or Queensland would be better examples, because they still have their state-based schemes for the moment. For the majority of consumers and, I would say, the majority of legal practitioners, that has not created a major problem. However, there has been a move, particularly over the last decade, from that state-based system of regulation and issuing of state-based practising certificates. To enable someone to practise as a legal practitioner and to charge for those services, most importantly, they need to be issued with a practising certificate.

With the introduction of this legislation, practitioners in Western Australia will be issued with an Australian legal practising certificate when they apply each year to renew their certification or registration as a practitioner. As we legal practitioners in this place know, that is separate to the concept of "admission". One is admitted to practise as a legal practitioner. I was admitted to practise as a barrister and solicitor—that was my admission process to the court—and I then needed to apply to get a practising certificate so I could practise. Those are still two separate processes and the practising certificate is an annual certification process. It is done for the good regulation of the profession but also, more importantly, for the protection of the consumers—the people who will be buying legal services from practitioners. This makes sure that people have the appropriate qualifications and the appropriate insurance, which is a precondition to being issued with a certificate, and that they comply with all the laws, regulations and rules that underpin practice in the profession, including, of course, most importantly—because legal practitioners handle money—adherence to trust account rules. At a state level, we have done all that over the last almost 20 years. Practitioners who were here at the time may remember the Legal Practice Act 2003.

Ms M.M. Quirk interjected.

Mr P.A. KATSAMBANIS: It may have come into force in 2004, but I think it was passed in 2003. Since that time we have had a nationally consistent framework and we will now be moving to a fully national framework with an Australian certification. But it will not be one of those commonwealth takeovers—if you like—and for that Western Australia deserves credit for resisting entering the scheme until an agreement could be reached that

preserved important supervisory powers here in Western Australia and gave us an appropriate say in what happens in the future in the national framework.

As I alluded to earlier, Victoria and New South Wales have both already entered into the scheme, and for the last three or four years, practitioners in Victoria and New South Wales have operated under the uniform law, as it is referred to for all intents and purposes, for the regulation of legal practitioners. There have not been any major issues there. Nothing has arisen that has caused any concerns to the public or the legislature in those places, but in Western Australia's case, it was wise to wait to see how things played out in Victoria and New South Wales and, importantly, as I said earlier, to make sure that that important Western Australian input was secured into the system. I think that is why, back in 2015 when all this was hitting its apex in the other two states that were participating in the scheme, it was extremely wise for us to sit back and wait for the agreement to an appropriate framework.

We can all bore Australia on this subject, because we who are practitioners—there are a number on the other side; there is me on this side—have been subject to some form of regulation or other in relation to being legal practitioners. I will talk about the nature of the introduction of the framework a little bit later, but under the framework that is being introduced by this bill, at a national level the Legal Services Council will be responsible for the making of the uniform laws and the regulation of the profession. Under the Legal Services Council, there will be a commissioner for uniform legal services regulation who will oversee how the Legal Services Council is going, and will ensure compliance across the board.

From a Western Australian perspective, the Western Australian institutions are preserved in that framework as a result of the 2019 intergovernmental agreement signed by Victoria, New South Wales and Western Australia. I believe it was at an Attorney General level that the intergovernmental agreement was signed.

Mr J.R. Quigley: Yes.

Mr P.A. KATSAMBANIS: Yes, it was the three Attorneys General of the three states I have mentioned. Following that intergovernmental agreement, legislation was passed in Victoria in 2019 to allow Western Australia to join the scheme on the basis of the concessions that were granted by the other two states in the intergovernmental agreement. That act in Victoria was the Legal Profession Uniform Law Application Amendment Act 2019—that is quite a tongue twister! The uniform law is actually contained in schedule 1 of the Victorian act, and we are incorporating that as part of our law in Western Australia through the passage of this bill in both houses of Parliament, but I will get to that in a minute.

As part of the agreement, Western Australia will have a member on the Legal Services Council. That is important because some of the agreements on the Legal Services Council, particularly around the costs of the council, need to be made unanimously. Western Australia gets to be not only a member on the Legal Services Council, but also involved in some very important decisions.

Mr J.R. Quigley: Veto!

Mr P.A. KATSAMBANIS: Quite rightly, Attorney General, Western Australia gets a veto, which secures Western Australia's position in a way that was not available back in 2015. Western Australia will also have one judicial member on the admissions committee. I do not know whether that member has already been appointed, but if they have not been, I am sure they will be in due course, which is also important.

Western Australia agreed to adopt the uniform law, which is a schedule to a Victorian act. As a result of that and just as a result of the name of this bill—I would imagine—when this bill gets to the other place, it will automatically be referred to the Legislative Council's Standing Committee on Uniform Legislation and Statutes Review. I am comfortable that that is the appropriate committee to scrutinise the operation of our legislation and the schedule that we are adopting, which is a schedule of an act of a foreign jurisdiction, for all intents and purposes. I have had a discussion with the Attorney General and have indicated to him that the Liberal Party is happy to facilitate speedy passage of this legislation through this place so that the bill ends up in that committee and it can perform its extremely important role to guarantee to us and the public that the sovereignty of the Western Australian Parliament is preserved in the adoption of a schedule of an act that has been passed in another Parliament. As I said, I gave that assurance to the Attorney General that we would be happy for that to happen.

Adopting this scheme will provide some key benefits to both practitioners and, most importantly, consumers of legal services. One of the real benefits for both practitioners and consumers will be access to what are referred to as short-form costs agreements. In a less contentious and clear-cut matter, a practitioner can use a short form of a costs agreement, which saves time for the practitioner. It will be worded in plain English and because it is shorter, the consumer will have more opportunity to scrutinise it and understand it as opposed to being given a screed of 40 or 50 pages. To be frank, I have seen some costs agreements handed to consumers who would need legal advice to interpret what they mean, which defeats the entire purpose of handing over a costs agreement. I notice that some of my legally minded colleagues on the other side are smirking at that. We have all encountered that. I do not think that helps anyone and it leads to a greater potential for disputation on costs. That will be the other big benefit for

consumers in all this. More clarity and better understanding will lead to fewer disputes. When there are disputes, consumers will also have access to what is described in the explanatory memorandum and the second reading speech as a low-cost "dispute resolution process". Hear, hear for that, because we need to make it as easy as possible for people, not harder.

Significant benefits will flow from this reform. Practitioners will save some time and a little bit of red tape will be cut. However, practitioners will also benefit from some more important changes. The first one I described—those streamlined, short-form costs agreements—will take away a big burden from small firms, particularly solo practitioners, who can spend an inordinate amount of time on work that they consider to be not overly productive and can tie up them and their clients into unfortunate situations. However, I think the major benefit is that it will allow Western Australia–based practitioners to compete in a broader market. I know that there is a fear that when we go through this sort of process that we will be swamped by eastern staters.

Mr Z.R.F. Kirkup: Say it ain't so, mate.

Mr P.A. KATSAMBANIS: Yes. "Say it ain't so", says the member for Dawesville. I know from experience that there are some highly credentialed practitioners in Western Australia who operate in specialised areas; for example, resources contracts, complex construction contracts that leverage off knowledge about the resources sector, subsea work, oil and gas work and some migration work specific to this state. I will come to the intersection of state and federal law in a minute if I have time. Those people, armed with an Australian practising certificate, will be on a completely level playing field with their peers and competitors in other states, particularly those in Victoria and New South Wales. Funnily enough, practitioners in Victoria and New South Wales comprise about two-thirds of the entire Australian legal services market. This legislation will give our practitioners better access to those markets. They already have it through various forms of mutual recognition. I was intrigued that about an hour or so ago the Premier gave notice of some sort of mutual recognition bill. I will be interested to see what that is about when we see it tomorrow or Thursday. Various forms of mutual recognition allow people to practise across jurisdictions. I, as a practitioner, have taken advantage of that on many occasions across many states. I think the only mainland state in which I have not provided legal services in is South Australia. I understand from a practical point of view what it is like to explain to clients in a different jurisdiction that I still have all the necessary insurances, all the necessary regulation around the services I offer, however, they are offered in another state, which makes things complicated. As I said, I think there are going to be advantages for practitioners and consumers.

There is one small detriment. However, we should not discount it as a detriment; we should take it on board. I think that by keeping the Legal Services Council and the bodies here in Western Australia, which I will get to in a minute, and superimposing this national regulatory framework and the Legal Services Council, there will be an additional cost for obtaining a practising certificate. I am not sure that has been fully quantified. At a briefing that the Attorney General's office kindly arranged for Liberal Party members, we were told that it was likely to be around $20 to $30 per annum per practitioner over and above what they currently pay. That is well and good, and, as I said, there will benefits. I outlined some of the benefits. In this constrained economic environment in which legal practitioners are concerned that even if they are billing, they may not be able to recover what they are billing, I hope that all these regulatory bodies start to look internally at reducing the costs, like businesses have to do and like households have been forced to do. To the general public, the perception out there is that legal practitioners charge high fees and are wealthy and can afford $20 or $30. But we should be looking at reducing the cost of business for a practitioner or a group of practitioners working out of a community legal centre, offering pro bono work, or a young practitioner who is starting out for the first time, rather than increasing them. I understand, given the nature of the framework that is being built around this, why there might be some additional costs, but let us get those bodies to look at their internal workings and have less physical travel and do more Zoom or Microsoft Teams–related meetings to bring down the cost of their operation so that practitioners can get a cost saving rather than a cost increase. I do not think that would be impossible. I am not accusing these bodies of being overly excessive in their spending or cost structure, but it is always worthwhile to have another look at it. I hope that the Western Australian member on the Legal Services Council, whoever that member is, will drive that so that we can drive one more benefit—that is, making things financially easier for practitioners as well.

As I have alluded to, the bill maintains a series of unique Western Australian bodies that have been at the centre of regulation of the profession in Western Australia: the Legal Practice Board, the Legal Profession Complaints Committee, which we heard about before today in quite some detail—I dare say that the Attorney General does not want me to traverse that ground again, and I will try hard not to—the Law Complaints Officer, the Legal Costs Committee and the Legal Contribution Trust. They are all unique Western Australian bodies and they are going to be preserved in this structure. The bill has some elaborate provisions that will make sure that they are reserved. The actual physical dealing with the profession on a day-to-day basis will still happen in Western Australia.

Mr J.R. Quigley: The same.

Mr P.A. KATSAMBANIS: They will look the same, Attorney General, with another layer over the top. However, the regulations that those bodies apply will be, to all intents and purposes, the same regulations—bar some savings that are unique to Western Australia—as those that apply to Victoria and New South Wales. I have heard some very positive words that South Australia is likely to join this scheme sooner rather than later, or would like to, anyway. I would hope that Queensland and Tasmania come on board as well, to make it a truly national, uniform profession, so that we do not have Australian legal practitioners, South Australian legal practitioners and Queensland legal practitioners. We will not have Western Australian legal practitioners anymore, although they will be Western Australians.

Dr A.D. Buti: Like the State of Origin football carnival!

Mr P.A. KATSAMBANIS: Yes, the law societies, law councils and law institutes of the various states could probably get together and organise a football carnival.

Mr D.R. Michael: The shadow minister will have to go back to Victoria to play!

Mr P.A. KATSAMBANIS: If they create State of Origin, I think the member for Mount Lawley's state of origin would probably be the same as mine! I do not know about State of Origin. I think it should be that after you have had a period of residence, you qualify. I do not know what that period should be; you tell me!

Dr A.D. Buti: Just on State of Origin, it used to be where you played your first senior game, not where you were actually born. That's why Stephen McCann, who played for North Melbourne—he grew up in Geraldton—played with the Vics.

Mr P.A. KATSAMBANIS: We will have that discussion outside, because there are some examples of the Victorians twisting that around. Jason Dunstall once played in the same forward line as Tony Lockett, but we are really veering off legal practitioners' regulations, unless we want to perhaps talk about those two people as consumers of legal services. They would have needed managers. They were both wonderful players.

Mr D.R. Michael: Some of them need criminal lawyers!

Mr P.A. KATSAMBANIS: I do not know about that; I will leave that to others' discretion! Not those people we mentioned, though, I think!

Coming back to the legislation, I think it was quite groundbreaking for the two major states to decide to go down this path. Outside the normal argy-bargy of "My place is better than your place", the history of disputation in the legal profession north and south of the Murray River prior to 2015 was not very good at all. It did not affect us over here in Western Australia, but it was not the greatest history. The Attorney General in Victoria at the time, Robert Clark, is a longstanding friend of mine. I think I have known him for almost 40 years, which makes me feel old, and every time I see him, he looks younger by the day! He is to be commended for actually driving this sort of reform because there are all sorts of competing priorities in government, and that was clearly a priority for him, and he drove it. I hesitate to say that those states showed the way, but they decided to get together to fix their problems. As I said at the time, there were very, very good reasons for Western Australia to stay out of that, because we would have been bit players in the regulation of the legal profession. This is a discussion that has occupied for some time the current federal Attorney-General, the former state Attorney General, Hon Michael Mischin, in the other place, and the current Attorney General. Institutionally, as a state, we hung out until we got a deal that was appropriate, and good on the current Attorney General for doing that. But he did it based on the work the previous Attorneys General had done in saying, "No; we're happy to do this, but we're going to do it on terms that favour our state, or at least don't disadvantage us." That is what we have here.

Where we go from here into the future is uncharted territory. At the heart of it, we have a governing set of rules for the legal profession that is contained in a schedule to an act of the Victorian Parliament, with a number of carve-outs, if you like, in our legislation to make sure that that schedule works for us. Hopefully in the future, with the veto Western Australia has on the Legal Services Council, any changes to that schedule and that Victorian legislation will be made by agreement between the participating states. As we know, the more states that come into it, the harder it will be to get agreement. In particular, if an unforeseen problem arises—I am not going to look into a crystal ball, but we all know that when problems arise, legislation needs to be amended—I would like to think that this system will be robust enough to allow, firstly, amendments to be agreed to by everybody, and then for the amendments to flow through to all the states affected by it. I do not think there could have been a better structure for this legislation, so I am not criticising the structure, but the structure of this sort of uniform law requires the key aspects of it to be legislated in one state and to then flow through, and that creates something that is a little similar to our circumstances in having to rapidly implement changes to family law that are made at a commonwealth level. I am sure the Attorney General, the member for Armadale, the member for Mount Lawley and the member for Girrawheen all understand exactly where I am coming from. I hope that, in the future, the way this legislation is structured to bring in uniform laws to apply to disparate jurisdictions does not create a problem when something needs to be acted upon urgently. Perhaps in his reply to the second reading debate, the Attorney General could turn his mind for a moment

or two to any mechanisms that have been discussed or that might even be contained in the intergovernmental agreement, because I do not actually have a copy of that agreement. I do not think one has been made available.

Mr J.R. Quigley: I think it's been tabled.

Mr P.A. KATSAMBANIS: It may have been tabled; I will have to look at it. It may have been tabled pending the passing of this legislation; I do not know. Anyway, it would be good if the Attorney General could put on the record how he thinks any such disputation might be dealt with in the future. As I said earlier, at the heart of this is that, yes, it is good to make rules for legal practitioners. I am sure that legal practitioners could do a pretty good job of regulating their own profession if left to their own devices. Perhaps not, member for Girrawheen! Maybe I am looking at it through rose-coloured glasses. But we do this to ensure the integrity of the profession and to protect people who utilise legal services. I hope that, by passing this legislation, we will empower Western Australian legal firms to compete on a level footing with firms in the eastern states, to enable them to prove that they are high-quality providers of legal services, not just in Western Australia, but also nationally and perhaps internationally, so that the profession grows and we keep our best and brightest in Western Australia, rather than see them either moving to other places or, as some do—I am not going to name them—running between jurisdictions and setting up operations in more than one jurisdiction. Some of them will do that. Since the Legal Profession Uniform Law Application Bill 2020 was tabled, I have not received any negative comments from any members of the legal profession. I have heard only positives. A few people have simply shrugged their shoulders and said, "It's hardly going to apply to me" but anyone who has wanted to express a comment has commented positively.

There are two bills; obviously one enacts the uniform law and the other is a taxation bill, if you like, which introduces the necessary levy. It is all explained in the second reading speech. As I said, I committed to the Attorney General that we would do our best to get this bill to the appropriate upper house committee that scrutinises uniform laws and reviews statutes, and I will keep to that.

In closing, this has been an extraordinary journey for a profession that has always prided itself on its state roots. The profession in Western Australia, South Australia, New South Wales and Queensland has always prided itself on its state roots. We were always told when we went through law school that even though we would become a Western Australian legal practitioner, a Victorian legal practitioner or a New South Wales legal practitioner, we would still be admitted in the Supreme Courts. I do not think practitioners send a cheque but they probably send a payment of $20 or whatever it is to the High Court to get their admission to practise in the High Court. Occasionally, the certificate arrives but in some cases it does not arrive for about 10 years. Under this scheme, after a person is admitted they will be issued with an Australian practising certificate in Western Australia. I think that is a good thing. However, I also think it is a good thing that the practical nuts and bolts regulations—whether it be complying with professional standards, complying with trust account rules or doing all the things people ought to be doing as a legal practitioner—will be done here at the local level. The risk in 2015 was that that was going to be removed from Western Australia, which is why Western Australia rightly said, "We'll wait." We did not say no. We said, "We'll wait. We'll have a look at what you do and perhaps you'll come back to us on better terms." Over there in the east, they saw the light. This Attorney General clearly got them to agree to the intergovernmental agreement. The profession welcomes this. I do not think it is marching in the streets and waving banners and saying, "Wow, we really, really need this" but it welcomes this legislation. The public will see benefits and I hope in some small way that this legislation also assists in stopping any future brain drain of our brightest and best legal practitioners so that they can operate from here in Western Australia, build a life here with their family and continue to contribute as valuable members of Western Australian society.

MR P.J. RUNDLE (Roe) [5.13 pm]: There are many greater legal minds than mine in here.

Dr A.D. Buti: You're a bush lawyer. Don't you worry about that!

Mr P.J. RUNDLE: That is right!

I will not be making a long contribution, but the Nationals WA support the Legal Profession Uniform Law Application Bill 2020 and the Legal Profession Uniform Law Application (Levy) Bill 2020, which have been a long time coming. The Attorney General's second reading speech noted that Hon Jim McGinty started working on these reforms in 2004 and made a speech in 2007 stating that we needed a national approach in recognition that the legal profession and legal services sector were adopting a national outlook. Obviously, there has been progress from there. In 2014, both the Victorian and New South Wales governments adopted their legislation and here we are doing the same in 2020. It is certainly good that we have worked towards a national perspective. It is good to see that WA is coming into the picture. I congratulate the Attorney General for bringing the bills through to this stage because the process appears to have taken longer than I would have thought.

I will provide a short background. Obviously, the Legal Profession Uniform Law Application Bill relates to regulating the legal profession in Australia and is subject to the intergovernmental agreement between Victoria, New South Wales and Western Australia. As the member for Hillarys said, hopefully the jurisdictions of South Australia, Queensland and Tasmania will join at some stage. The levy bill allows for a levy to be charged during the operation

of the first bill. The purpose of the main bill is for Western Australia to join the Legal Profession Uniform Law scheme, having signed an agreement with Victoria and New South Wales in February 2019. The bill will apply the Legal Profession Uniform Law as the law of WA and provide for the tabling and disallowance of amendments made to that law. It will enact provisions to regulate legal practice that has local application in WA. The bill will also repeal the Legal Profession Act 2008 and the Law Society Public Purposes Trust Act 1985. In simple terms, this legislation will create a simpler, more efficient system for both law firms and their clients. It will cut red tape, better protect consumers, and ensure consistency across our borders. One of the most important elements is that it will allow lawyers to practise across jurisdictions, which is quite a concern at the moment because a lawyer from Victoria, for argument's sake, who moves to WA cannot practice in WA. That is a concern and this legislation will change that scenario. It will reduce compliance costs for firms operating across participating jurisdictions. I have a list of 22 different acts that will be amended by the bill. I will not go through all those, but some of the more important ones are the Children and Community Services Act 2004, the Magistrates Court Act 2004, the State Administrative Tribunal Act 2004 and the Strata Titles Act 1985, which has recently been an issue of public discussion. Having reflected on national legislation and the like, when we take a national approach to something, rather than the states going off on their own tangent, we can achieve a lot more. The recent scenario that played out with the National Redress Scheme, following the statute of limitations legislation that the Attorney General succeeded in taking through, is an example of how we can work much better nationally. It was good to see that all the stakeholders that contributed to the development of the bill were generally in agreement. I refer to the Legal Practice Board of Western Australia, the Legal Profession Complaints Committee, the Law Society of Western Australia, the Western Australian Bar Association and many others. I agree with the member for Hillarys in that I certainly have not had any feedback from people who do not want to see this legislation go through or from people who are concerned about it. Generally, most of us would like to see national uniform legislation apply.

In summary, I appreciated the briefing I attended, which was pretty direct and informative. I took from that briefing that the cost to Western Australia will be about nine per cent and the cost to practitioners will be in the range of $20 to $30. I differ from the member for Hillarys in that I think most of our legal profession can handle roughly $20 to $30 per practitioner. The other states—Queensland, South Australia and Tasmania—coming in was brought up at the briefing. Hopefully, they will not be too far behind WA. Western Australian representatives on the board will be on the standing committee that sits over the Legal Services Council. The committee needs unanimous approval to put anything in place, and that is important, but local adjustments can be made—for example, the professional indemnity scheme for WA. I understand that the overall cost nationally is about $1.3 million per year and I believe that the budget has been approved by the Standing Committee of Attorneys-General. I was informed in the briefing about the calibre of people who will sit on the board. They will include the likes of Bret Walker, QC, who I think most members would have heard about. It was pleasing to talk to Joshua Thomson from the State Solicitor's Office. Hopefully, Josh will also sit on the council. I think he is a good person to have in the mix as well.

The Nationals WA are generally very supportive of this legislation. As I said, from a legal standpoint, it is really important that the states work together. The National Redress Scheme is an example of everyone working together to make it easier for the people involved—lawyers, victims and the like. I look forward to not only Western Australia joining this scheme, but also Queensland, South Australia and Tasmania coming into the mix in the not too distant future. Certainly, the National Party supports the bill.

DR A.D. BUTI (Armadale) [5.23 pm]: It was good to hear the member for Roe espouse the virtues of centralisation. As I said, Gough Whitlam would be very proud of him. The member for Hillarys made a very commendable effort outlining a bit of the history behind the bills. I will go over the history a bit more in a minute, but straight up I want talk about the parochialism of the legal professions in Australia, and I will give an example a bit later. Hopefully, this legislation will alleviate some of that parochialism. We can all be proud of our own jurisdictions, but sometimes that can inhibit efficient commerce and legal representation.

We are dealing with two bills—the Legal Profession Uniform Law Application Bill 2020, and the taxation bill, the Legal Profession Uniform Law Application (Levy) Bill 2020. I will go through some of the interesting parts of the legislation briefly, because I want to get on to some of the history that led to the legislation and allow enough time for the member for Mount Lawley to make a contribution before the dinner suspension.

As was mention by, I think, the members for Roe and Hillarys, we are coming into the scheme through Victorian enabling legislation, but there are some differences, including on professional indemnity insurance. It is important—the member for Roe just mentioned this—that the Parliament of Western Australia has the ability to retain its sovereign powers, or rights, to disallow any amending laws from the Victorian jurisdiction; that is, maintaining our ability to disallow any amending laws that we do not think are in the best interest of Western Australia. The members for Roe and Hillarys talked about Western Australian representation on the Legal Services Council and its admissions committee, and that the Attorney General will be a member of the standing committee. Under the legislation, the Legal Practice Board of Western Australia will continue and the Legal Complaints Committee will be renamed

the Legal Services and Complaints Committee. Those are some issues addressed by the bill. Of course, there will be a lot of consequential changes to a number of pieces of legislation.

The member for Hillarys outlined a bit of the history of this bill, and I would like to develop that because it is quite interesting. Back in the 1980s and early 1990s, or maybe even earlier, there was a move toward looking at the way in which the professions in Australia were being run and organised because of concerns about economic impacts. The catalyst for seeking a more uniform legal profession was economic forces. The argument was that the separate, parochial regulation of the legal profession in each state hindered the proper function of commerce in Australia, and it was the province of relevant professional bodies to keep a closed shop and to ensure that costs were not reduced for consumers. It really did not serve the consumer. In the end, this Parliament, and all Parliaments—although we, of course, need to consider the legal profession and the people who practice in that profession—ultimately needs to look at the what is best for the citizens of our jurisdiction. Each state having a tightly regulated system bound by parochial interests did not serve clients in need to obtain affordable legal services.

There were two major components of the attempt to free up the industry to create a more uniform profession in Australia—that is, harmonisation and co-regulation. The harmonisation component was to have a regulatory regime that covers the legal profession across the various jurisdictions in Australia. The aim was to increase the competitiveness of the legal profession. As the member for Hillarys said, once upon a time, we had only state-based law firms. Then they became national law firms. Of course, now we have international law firms spreading their tentacles across the world. There is also the issue of co-regulation. Rather than having the profession regulate itself, there are independent or external regulators. There would be a professional overseer and an independent regulator. Of course, the Legal Practice Board in Western Australia is an independent overseer.

That was the genesis, or the kernel, of the changes being pushed in the 1980s and 1990s by the Hawke–Keating government. In the early 2000s, the push for change accelerated. In 2001, the Council of Attorneys-General—the COAG for Attorneys General—resolved to develop and enact model laws to regulate certain aspects of the legal profession and bring some uniformity in areas such as law degrees, practising legal training, the national practising certificate scheme, requirements for the disclosure of information of costs to clients, definitions of misconduct, rules for trust accounts and fidelity funds, and regulations for incorporated legal practices.

Regarding standard law degrees, I did my law degree at the Australian National University, which I still consider to be the greatest legal institution for the study of constitutional law.

Mr S.A. Millman: Good save!

Dr A.D. BUTI: It may not be the greatest for some of the more commercially oriented legal disciplines, but it is for constitutional law. When I came back to Western Australia, although I was able to take up an article clerkship at a law firm, I still had to do one more unit. I think Western Australia is still the only jurisdiction in Australia where people have to study legal practice and transactions or conveyancing as part of their law degree.

Mr S.A. Millman: It's commercial practice and conveyancing.

Dr A.D. BUTI: Yes. I think we are the only state in Australia where that is still part of a law degree. I was not very happy to start my legal career and still have to go to university for two or three hours a week.

Mr P.A. Katsambanis: Victoria had something similar.

Dr A.D. BUTI: Did it, as part of a law degree?

Mr P.A. Katsambanis interjected.

Dr A.D. BUTI: We had that in Western Australia. That was happening when I was an articled clerk. I still had to do a year-long law course at university; otherwise, I could not be admitted.

There is another part to the parochialism. Although I was Western Australian, I did my degree at ANU. In around August of my final year, we were looking at coming back to Western Australia. While my mother-in-law was visiting us in Canberra, I asked her to see how I could go about applying for articles when I got back to Western Australia. She must have misinterpreted what I said because she rang a legal workplace agency instead. The agency rang me and told me to send in my CV, which I did. At the same time, I also made three direct applications—to Dwyer Durack, Legal Aid WA and Parker and Parker. The only responses I received were from those three firms or services to which I had made a direct application. When I rang the professional workplace agency to ask why I had not received any other requests for interviews, they told me, "Well the market's pretty tight at the moment and we think if you're not Western Australian, we're not going to process your application." That showed me the parochialism of the legal profession.

In early 2000, a move was made to make the profession more uniform in the areas I mentioned. In 2004, draft model laws were released by the Council of Attorneys-General. Between 2004 and 2008, new legislation based on the model laws was introduced in all Australian jurisdictions except South Australia. That was back in 2004 to 2008. At the

2009 Council of Australian Governments meeting, under the auspices of microeconomic reform and a regulatory reform agenda, a task force was set up to try to draft national laws for regulation of the legal profession, with the aim that they should be implemented in all jurisdictions. However, as we know, that did not take place. By December 2013, only New South Wales and Victoria remained committed to uniform law for the legal profession. The member for Hillarys talked about Western Australia. He made the argument that it was appropriate for Western Australia to wait, and not to commit earlier to the scheme. I am not so sure about that, member for Hillarys, but it is not a massive debating point. On 26 August 2014, the Law Society of Western Australia recommended to the Attorney General—it would have been Christian Porter—the idea of uniform legislation. I remember speaking to Christian Porter about it and he said he had gone cold on the idea, which I was very disappointed about. On 4 May 2016, the Law Society again wrote to the Attorney General, which by then was Hon Michael Mischin, to express its support for the adoption of, at that stage, the Australian Solicitors' Conduct Rules. It has taken a change of government and a new Attorney General to get to this stage of agreeing to a uniform legal profession. Of course, we are going to be part of the scheme with New South Wales and Victoria, which will include about 75 per cent of the legal profession in Australia, so it is quite significant. We are basically piggybacking on the Victorian enabling legislation. It is very important that we retain our sovereign rights and have the ability to disallow any amending legislation that comes out of the Victorian legislation.

As I said, I want to leave enough time for the member for Mount Lawley, so I will conclude very shortly. This legislation has had a long history and a few stumbling blocks. Basically, by the end of the first decade of this century, most jurisdictions had gone cold on the idea, but Victoria and New South Wales—with the two biggest populations—agreed to go their own way. As the member for Hillarys said, it was a bit unusual to have such a level of cooperation between north and south of the Murray River. It was a good start. Now, Western Australia has come into the scheme. I have no doubt that eventually the legal professions in all states and territories will come under one scheme. It seems to be a no-brainer. The economic pressures will become so great that the other jurisdictions will want to join under a uniform legal profession in Australia.

With those comments, Deputy Speaker, I will hand over to my friend the member for Mount Lawley.

MR S.A. MILLMAN (Mount Lawley) [5.37 pm]: Deputy Speaker.

The DEPUTY SPEAKER: Yes, member for Mount Lawley; you have the call, although I think the member for Armadale already gave it to you.

Mr S.A. MILLMAN: I think that shows a good sign of cooperation, and good cooperation is exactly what these bills are about. It is fair to say that during the COVID era, things move very fast. Although today people are debating the state border and how Western Australia remains separate from the rest of Australia, it is true that the handling of the pandemic has brought out the best of our federal system. We had unprecedented cooperation between the states and between the states and the commonwealth. Everyone I spoke to during that time commented on the statesmanlike way our political leaders put aside their philosophical differences and focused deliberately, passionately and professionally on dealing with the pandemic. Unquestionably, the Australian federal system is an outstanding form of government when it works well. When it works well, we should harness the benefits for Western Australians. To harness those benefits requires an activist government that works hard and tackles the task at hand.

The member for Armadale, in his excellent contribution, outlined the significant history and long gestation period of this legislation, with all the work that has gone before it. It is probably no surprise that this Attorney General, with his reputation for hard work and bringing legislation before Parliament, has succeeded when, unfortunately, others in the past have not. I rise to speak in support of the Legal Profession Uniform Law Application Bill and Legal Profession Uniform Law Application (Levy) Bill because they do precisely what I have spoken about—that is, they take the best attributes of our federal system and distil them for the benefit of our Western Australia community. Many times over the course of the fortieth Parliament we have witnessed the McGowan government doing just that. Great examples of uniform laws tailored to work for the benefit of Western Australians include the Work Health and Safety Bill that is currently before the Parliament; the Child Support (Commonwealth Powers) Act, which was assented to in May 2019; the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018, which was alluded to in the excellent contribution made by the member for Roe; the Fair Trading Amendment Bill 2018; and the Health Practitioner Regulation National Law (WA) Amendment Bill. There are many examples of the ways in which the McGowan government has made a move towards uniform legislation to deliver a benefit for the people of Western Australia. The Western Australian Parliament has a long history of doing this as well. I need only refer members to the Australian health practitioner regulations from 2010, the uniform shipping laws from 2009, the Australian Consumer Law from 2011, and the rail safety national laws from 2015 to demonstrate that uniform legislation has an important role to play in our legislative structure. This legislation is the latest example. As I say—there are no surprises here—this legislation has been brought to this place by the Attorney General, a minister whose track record in modernising and updating our statute book is second to none. As other members have already commented, this legislation has been brought to this place after extensive consultation and with the full support of the legal profession. In a media release issued by the Law Society on 28 February 2019, the former president of the Law Society, Greg McIntyre, SC, had this to say —

> "The Law Society has been in favour of Western Australia adopting the Legal Profession Uniform Law for many years. A single, uniform set of professional conduct rules providing inter-jurisdictional consistency can only benefit consumers of legal services, the legal profession and regulators, especially with national and international firms now being commonplace."
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> …
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> "The Law Society has always maintained that Western Australia should have guaranteed representation on the national Legal Services Council and that WA should continue to maintain a local regulatory body made up of representatives of the legal profession and independent of government."

In those words, Mr McIntyre eloquently summarises the position that was endorsed and supported in the excellent contributions by the members for Hillarys and Armadale, because numerous benefits will flow to practitioners and consumers of legal services as a result of the introduction of this legislation.

This is a good bill at the right time. This bill will deliver the following. Lawyers will be able to practise across Australian jurisdictions without having to meet the requirements of multiple different regulatory regimes with differing standards. I, the member for Hillarys, and, I am sure, the member for Armadale, have all practised across a number of jurisdictions. I have never practised in South Australia. I have represented a South Australian client, but I have never practised in South Australia, so I share that in common with the member for Hillarys. The bill will increase stronger competition between firms. I see the member for Carine nodding. The member for Carine understands that increased competition will put downward pressure on fees, which can only be for the good of consumers of legal services.

Mr A. Krsticevic: I'll vote for that.

Mr Z.R.F. Kirkup: He gets it!

Mr S.A. MILLMAN: Well, he is a smart man.

Consumers and clients will have consistent protections, rights and remedies —

Several members interjected.

Mr S.A. MILLMAN: I am sorry, member for Carine. The member's own colleagues are laughing at the suggestion that he is intellectually capable.

Mr A. Krsticevic: They like to think they're my equals!

Mr S.A. MILLMAN: All I will say is that with friends like these —

Mr A. Krsticevic: The member for Armadale and I are good friends. Don't worry about that.

Dr A.D. Buti: The two Tonys!

Mr S.A. MILLMAN: When the member for Armadale and the member for Carine have quite finished their sidebar conversation, I will continue.

Consumers and clients will have consistent protections, rights and remedies across participating jurisdictions. Standardised complaint resolution procedures will enhance the position of consumers and clients in disputes with their practitioners. The member for Hillarys has already alluded to the simplified fee and retainer agreements that will be consequent upon this legislation. The increased pressure on law practices to charge fair and reasonable costs and to streamline their costs disclosure processes will also be a beneficial corollary of the passage of this legislation. Rules for the admission of new practitioners will be uniform.

I want to make a couple of further points. Regulation of the legal profession is an interesting subject matter for discussion. The member for Armadale took us all the way back to the 1980s, but I want to go back much further than that and share with members how far back the pursuit of legal services has been regarded as professional. If we go back to medieval or early modern traditions, we will see that there were only three recognised professions: divinity, medicine and law. The members for Armadale, Hillarys, Girrawheen, and the Attorney General and I take great pride in being professional practitioners in pursuit of the law.

Mr P.A. Katsambanis: Those were the only three options my mother ever gave me. I chose number 3.

Mr S.A. MILLMAN: All three are excellent endeavours and were regarded in medieval and early modern times as the recognised professions. Many professions have joined that list recently.

Dr A.D. Buti: Latecomers!

Mr S.A. MILLMAN: Latecomers!

I will take issue with one thing that the member for Armadale said. The requirement to complete commercial practice in conveyancing and drafting, as the subject was called at the University of Western Australia, was a very

important part of the completion of my degree. I place on the record my gratitude to Judy Eckert, who was a judge for a while and delivered that course at UWA.

Dr A.D. Buti: My criticism was not to do with the course. I think it should be part of the professional development after the degree rather than part of the degree.

Mr S.A. MILLMAN: We covered a lot of the material that we covered in commercial practice in the associate training program anyway, so it is a fair point, which was well made, as is the member for Armadale's custom and practice.

I want to talk briefly about the concept and importance of uniformity. In the common law tradition, at least in Australia, there has been a push for uniformity in decision-making. I am referring to the fourth edition of "Laying Down the Law", by Morris, Cook, Creyke, Geddes and Holloway. Page 99 discusses decisions made in other Supreme Courts and whether weight should be given to those decisions, which is the doctrine of stare decisis and precedent. It states —

> Although state and territory Supreme Courts are not bound by decisions of Supreme Courts of other states or territories, it is generally recognised that consistency is desirable. In the interpretation of Commonwealth legislation, or legislation which is mirrored in each jurisdiction …

The authors refer us to the decision of Chief Justice Street in R v Daher [1981] 2 NSWLR 669 at 672. Various other cases are referred to thereafter. The authors go on to state —

> Single judges of Supreme Courts also recognise the desirability of conformity with decisions of appellate courts of other states and territories.

This is across jurisdictions —

> In *Body Corporate Strata Plan No 4303 v Albion Insurance Co Ltd* [1982] VR 699 at 705, Kaye J of the Victorian Supreme Court commented: 'In circumstances where there is absence of any binding authority, there are sound reasons for seeking uniformity of the common law throughout the Commonwealth of Australia by following a decision of an appellate court of another State unless it is manifestly wrong'.
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> …
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> Considerations of uniformity are also regarded as relevant when single Supreme Court judges have to consider decisions of courts exercising coordinate federal jurisdiction.

I am trying to demonstrate that the common law, the judge-made law of Australia, in various jurisdictions at a Supreme Court level has demonstrated over time that uniformity is a good aim in and of itself. Legislation such as this, which has been brought before Parliament to aid the uniformity of the regulation of the profession—an ancient and honourable profession—can only be to the good. Other members have already traversed the retention of the sovereignty of the Western Australian Parliament at some length, and the matter has been debated and discussed. I will probably finish on this point to allow the Attorney General some time to summarise the position before we finish. In that regard, I would like to say that this legislation will still be subject to all the considerations of parliamentary sovereignty. I started my contribution talking about how quickly things have moved in 2020 as a result of the circumstances that we are confronted with. The member for Hillarys raised the issue of acting urgently. One of the great features of deliberative democracy is that we take the necessary time to consider exactly what we are implementing but act with appropriate expedition. The fine balance that we are trying to achieve and that the Attorney General achieves with the introduction of this legislation is not, as we have seen with the formulation of the national cabinet, an accrual of executive power, but a mechanism by which the Parliament still retains its power and sovereignty to bring the necessary legislation through. Striking that balance and getting that balance right is a wonderful art and something that this legislation does very well, and the timing of this legislation speaks precisely to that. The Attorney General should be commended and the legislation should be supported.

I wanted to finish by saying that I started my contribution talking about the efficacy of our federal system. This legislation goes some way towards fulfilling the promise of that system—a goal imagined more than 120 years ago—of providing a well-functioning common market. This is a common market in which legal services can be traded across state boundaries. Members have expressed their desire to see other jurisdictions join the uniform regime. In response, I say that a significant proportion—the plurality—of legal practitioners in Australia will be covered by the system. Some 75 per cent of legal practitioners will be covered by the system. When we have regard to national firms, international firms, global legal firms and clients based across the whole jurisdiction, that can only be worthwhile. The introduction of this uniform law will benefit legal practitioners, consumers of legal services and the public of Western Australia and is testament to this Attorney General. It shows once again an activist Labor government taking the necessary steps to deliver the benefits for the community that arise as a result of the Federation working well. For all those reasons, I commend the legislation to the house and I commend the minister for bringing it to us.

MR J.R. QUIGLEY (Butler — Attorney General) [5.52 pm] — in reply: Firstly, I would like to make a clarification to the house. In moving that the bills before the chamber this evening be debated cognately, it was misspoken that the Legal Profession Uniform Law Application (Levy) Bill 2020 was the main bill. In fact, the Legal Profession Uniform Law Application Bill 2020 is the principal bill. For members present, that is the larger of the

two bills before the chamber this evening. The levy bill has to be separate because it is a revenue-raising bill. It raises revenue by imposing a levy on practitioners going for their practice certificate, that levy being an amount decided upon from year to year to run the law library, which is maintained in the David Malcolm Justice Centre. Until now, it was available to all Western Australian practitioners but practitioners visiting our state will also be able to use the library.

A justifiable concern was raised by former attorneys and by the profession that previous iterations of the uniform law required the divesting of power from this jurisdiction to the eastern states. Victoria and New South Wales, I think combined, probably have about 70 per cent of Australian practitioners. We have about seven per cent. They were worried that we would be swamped with the wise men from the east. As noted by the member for Hillarys, any agreement to change the uniform law will require a unanimous decision of the Legal Services Council, upon which we have a member, and that will mean that we could always exercise a veto power.

I also want to turn to another issue raised by my friend from Hillarys that relates to the admissions committee, which will admit practitioners. The rules for admission will be uniform between Western Australia, New South Wales and Victoria. On that admissions committee will be the senior puisne judge of the Supreme Court of Western Australia, Hon Justice Le Miere. He is currently on the admissions committee with an observer status only and attends all admission committee meetings.

The next matter that was raised by my learned friend the member for Hillarys was the question of amendments to the uniform law and how they will be dealt with. They will not create a problem when urgent attention is required. When any amendments to the legal profession uniform law are required, these will be the subject of consultation by the precipitating jurisdictions. When agreement is reached, Victoria will amend schedule 1 and the amendments will apply in Western Australia subject to disallowance by the Parliament of Western Australia. Thereby, the sovereignty of our Parliament is preserved so there will be no referral of power.

There is a useful chart on page 24 of the Legal Services Council's 2018–19 annual report, which sets out the process for amending the legal profession uniform law. On the next page, there is a similar chart for amending the uniform general rules. I am happy to lay a copy of this chart on the table for the rest of the proceedings. It shows that the commissioner, the admissions committee and the local regulatory authority or stakeholders inform the council of a proposal to amend the uniform law. That then goes to the council. The council consults with the stakeholders. If an amendment to the law is necessary, the council recommends the draft to the standing committee.

If the standing committee approves the amendment, the Victorian Office of the Chief Parliamentary Counsel drafts a bill to amend the law. The bill is enacted by the Victorian Parliament, and the amendment is adopted in all participating jurisdictions under section 4 of the Legal Profession Uniform Law Application Act 2014, I stress, subject to a disallowance motion in this Parliament. The normal rules apply in the other place for disallowance. I am happy to lay that chart on the table. I will also lay on the table, for the information of members for the rest of the day, the flow chart for amending the rules, which I ask the attendant to photocopy for the members for Hillarys, Mount Lawley and Armadale and the other speaker in the second reading debate.

We are very pleased that the opposition and the Nationals WA support this bill. I know that it is also supported by the federal Attorney-General. He is also keen to see national reform. This is micro-economic reform. We have a national medical profession and a national dental profession. As soon as it is passed, there will be a national veterinary profession. I recall the former Chief Justice of the High Court, Robert French, QC, saying in his valedictory speech in the High Court at the end of 2016 that after nearly 200 years of Federation, at long last we have a national rail gauge and a national railway line, and it is about time we achieve a national legal profession. Western Australia, of the small states, is leading the way by joining. We hope that it will create critical mass that will encourage the other states and territories to do likewise so that we can have a truly national profession.

Sitting suspended from 6.00 to 7.00 pm

Question put and passed.

Bill (Legal Profession Uniform Law Application Bill 2020) read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Mr J.R. Quigley (Attorney General)**, and transmitted to the Council.