National

Legal Profession Reform Update

An abridged version of the address by Attorney-General Robert McClelland at the 48th Annual Vincent's Symposium, Brisbane, Saturday 27 March 2010.

As you would no doubt be aware, debate about the need for reform to the way the legal profession is regulated has been occurring for quite some years. Despite some incremental improvements over recent years, regulation of the legal profession remains overly complex and inconsistent, with each State and Territory maintaining its own regulatory structure.

Each jurisdiction applies different rules in areas such as costs disclosure, admission and practising certificates, as well as complaints handling and discipline. Legal profession regulation, for example, currently totals over 4,700 pages of legislation, regulation and rules throughout Australia.

Australia is now very much a national economy. For that reason, we need to tackle disparate, complex systems of regulation to deliver a truly national profession.

In April last year, the Council of Australian Governments (COAG) agreed that reform of the legal professional should be added to the national microeconomic reform agenda. At the request of COAG, I established a specialist Taskforce and Consultative Group to develop legislation for the uniform, national regulation of the legal profession across Australia.

I am pleased to note that this important project is very much on track and that a draft Bill and National Rules will be presented to COAG when it meets next month (April). The inclusion of National Rules represents a significantly larger undertaking than was initially proposed, but is a useful and important addition which will provide greater detail on the proposed reforms.

I am aiming for COAG, at its meeting next month, to consider the draft Bill and release it for a period of further consultation. The release of these documents would provide an important opportunity for further extensive consultation with a concrete product available to be examined and scrutinised.

Consultation has been integral to the success of the project, given the range of perspectives to be considered and interests to be taken into account. I believe that additional consultation and detailed examination of the proposed reforms would be a worthwhile exercise.

Key Features of the Reforms

I spoke recently to the Western Australian Law Society in Perth about the project, and noted that there has been significant debate and commentary about aspects of the proposed reforms.

In that speech I set out some of the key features of the draft Bill, some of which go to the heart of a number of the most widely discussed elements of the reform process.

To briefly recap these key features, the Taskforce is proposing models for a National Legal Services Board and a National Legal Services Ombudsman. The Board would set a single, national set of standards, and the Ombudsman would ensure national consistency in handling consumer complaints.

Oversight of the system is proposed to be left very much in State and Territory hands; States and Territories would jointly establish the national bodies which would be accountable to them through State and Territory Attorneys-General.

The Board and Ombudsman would promote uniformity, but it is envisaged that most of the Ombudsman's functions would be undertaken by State and Territory bodies.

This proposal would see the continuation of a system of co-regulation with a central role for the profession and its representatives in, for example, the development of conduct rules and other regulation through their participation in advisory committees to the Board. Some powers of the Board and Ombudsman may also be delegated to the profession.

The Taskforce has developed a proposal that the National Legal Services Board would constitute up to seven members appointed by the Standing Committee of Attorneys-General (SCAG) with the Law Council of Australia and the Council of Chief Justices each having a nominee appointed.

On this point, I have previously

Attorney-General Robert McClelland

stated my strong personal view that independence within our justice system is fundamental. I am aware that a number of stakeholders have strong views on the composition of the Board. Accordingly, the Taskforce will be considering the appropriate composition of the Board following further consultation.

I am also aware of issues that have been raised with respect to costs associated with the new framework.

The Taskforce is aiming to deliver reforms that fit within the current funding envelope. The new national bodies would have to be funded, but their functions will be minimised through the continued involvement of State and Territory bodies and the profession itself.

Proposed centralisation of a few areas including admission and the maintenance of the regulatory system would create efficiencies that will help fund the new bodies.

The Taskforce is proposing a model for distribution of interest from multi-jurisdictional trust accounts that maintains the status quo. Similarly, the Taskforce is not proposing any move away from each State and Territory managing its own fidelity fund. Hence, States and Territories will not lose the revenue from trust account interest which is often used for worthwhile purposes such as legal aid.

I know that these issues have, and will continue, to generate considerable and robust debate which is why we warmly welcome all comments and views during further consultation.

The reality is that if we do nothing we will continue to have a system made up of eight different rule-makers, up to eight bodies approving legal education or training courses or providers, up to eight entities assessing and registering foreign lawyers, and so on.

Alternatively, we can work to effect real change that will benefit not only multi-jurisdictional firms, but all practitioners, as a result improvements to the regulatory system such as simplification and deregulation and the adoption of best practice and other innovations.

I would also like to take this opportunity to outline details of two further key areas of reform which will be contained in the draft Bill and National Rules, including arrangements for foreign lawyers practising in Australia, and encouraging volunteerism in the profession.

Foreign Lawyers

Disparate regulation of the profession creates a significant impediment to foreign lawyers working in Australia and impedes Australian lawyers' competitiveness in the international legal services market.

A number of our international counterparts have advised that they are reluctant to open their legal markets to Australia because it would be "like dealing with eight different countries."

Under the current system, foreign lawyers are often required to

complete undergraduate subjects in Australian law before they can be admitted, regardless of their experience and the subjects' relevance to the area in which they want to practise.

One example I am aware of concerns a lawyer with nearly a decade of experience, who had been admitted in Germany and the United Kingdom, yet was asked to complete 13 undergraduate subjects in order to qualify for admission; the equivalent of an entire law degree.

The International Legal Services Advisory Council (ILSAC) has noted that the current restrictive entry standards discourage internationally experienced lawyers from working in Australia. Inconsistency between jurisdictions in assessment processes and subsequent requirements are unnecessary and create forum shopping.

For these reasons, I am pleased to announce that the draft Bill will propose a new option of 'conditional admission' for foreign lawyers which will allow them to practise law in Australia either for a particular period of time, or for practise only in a specified area of the law.

It is anticipated that this innovation will give the Board more flexibility to admit practitioners without onerous requirements, whilst retaining the confidence that they have adequate qualifications for the services they will provide to consumers.

This will, in turn, increase both the availability of quality services to Australian consumers and boost Australia's reputation internationally.

Volunteerism in the Profession

The other issue that I am particularly pleased to discuss today relates to encouraging volunteering in the profession by providing low-cost practising certificates for those who only wish to volunteer at community legal centres and not practise elsewhere.

In addition, it is also proposed that all practising certificates would allow volunteering at these vitally important centres.

Such an approach has been trialed successfully in a number of jurisdictions. It is my hope that the national extension of this practise will reduce the burden on community legal centres, and potentially bolster their resources for the important work they do in providing access to justice.

It is by no means an easy task to effect the necessary changes to achieve a truly national legal profession, but I am encouraged by the progress of the project to date and the invaluable input of the Taskforce, Consultative Group and those that have contributed to the process.

The draft Bill aims to resolve many of the issues identified in the current system.

I encourage, and look forward to further debate on these important reforms which will, I believe, benefit practitioners, consumers and the community alike.

Postscript by Barbara Bradshaw

It is anticipated that COAG, at its 19 April meeting, will consider the release of the draft Bill and Rules for a consultation period of three months. As a member of the National Legal Profession Reform consultative group, I will be considering the package. The Society will also closely consider the draft Bill and Rules and their implications for the Society, Territory practitioners and consumers, in consultation with other stakeholders. The Law Council of Australia and its constituent bodies, including the Society will be providing extensive comment back to the Task Force. Further seminars will be held for the profession