

Law Council of Australia

The Law Council of Australia is a federation consisting of representatives of constituent bodies. The constituent bodies are the Bars of New South Wales, Victoria, Queensland and the Australian Capital Territory, and the Law Societies of New South Wales, Victoria, Queensland, South Australia, Western Australia, the Australian Capital Territory, Tasmania and the Northern Territory. Members of the independent Bars in South Australia, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory are members of the relevant Law Society. For many years the Bars had a veto over constitutional change. When it was agreed that the Australian Capital Territory Bar should be admitted that veto was given up. It is still necessary to obtain a two thirds majority for the constitutional change.

For some years the Law Society of New South Wales and the Law Institute of Victoria have not been happy with a constitution which gives them no more power than other constituent bodies. Each have taken different positions at different times, but the pressure for some change has been continual. It has led to notices of withdrawal and threats to withdraw. Amendment of the constitution to provide for non-voting individual members was the result of this pressure. It was opposed by the Bars as detracting from the position of the constituent bodies. Constitutional change has been difficult, however, because there has been a good deal of caution by other constituent bodies - whether they be Bars or Law Societies - concerning the ambitions of the two large Law Societies.

However, last year a deal was done between the Law Societies called a "protocol" which, whilst professing not to be a constitutional change, institutionalised a body called the Policy Advisory Group including representatives of individual members and sections. This group was to meet immediately before the Law Council of Australia meetings, at the cost of the Law Council, and its decisions were to be accorded weight in the deliberations of the Law Council. The Bars regarded this as a de facto constitutional change and refused to have anything to do with it. When negotiations for compromise stalled, it became necessary for the Bars to give notice to give the requisite 6 months notice of withdrawal. Plans were made to ensure that the Australian Bar Association could fulfil the necessary federal role for the Bars.

Negotiations initiated by Darryl Williams, Q.C. of the Western Australian Bar as President of the Law Council of Australia bore fruit after months of discussion at the April meeting of the Law Council of Australia in Hobart. The previous protocol was replaced by a protocol, the full text of which is set out below.

This should now enable the Law Council of Australia to be managed in a more business like fashion, and permit it to carry out its task of representing constituent bodies at the federal level without the distractions of constitutional wrangling.

Protocol

(1) The Law Council of Australia (LCA) shall meet at least twice in each year, one meeting being its Annual General Meeting. Special general meetings may be held at the discretion of the Executive or upon request by three constituent bodies. Without limiting the power of the General Meeting, it will generally be restricted

to consideration of major policy issues with minor matters where necessary being considered by postal vote.

- (2) The Executive is to exercise responsibility for the affairs of the LCA subject to any direction of a General Meeting.
- (3) The Executive is to be expanded to include two general members in addition to the office bearers. Such members will be elected at the AGM from nominations from constituent bodies received prior to the meeting. The Executive will consist of at least one member from one of the four independent Bars and at least one member of each of the Law Society of New South Wales and the Law Institute of Victoria. No more than two members of the Executive will be members of one constituent body, provided that a member of the Executive who is a member of more than one constituent body shall be taken for the purposes of this resolution to be a member of the constituent body in the State or Territory in which the member has his or her principal place of practice.
- (4) The requirements that of the President and Vice-Presidents one shall be a barrister or a barrister and solicitor practising solely as a barrister can be waived by unanimous resolution of the Council for any period.
- (5) It is acknowledged to be desirable that in order to promote continuity each constituent body should nominate as its delegate to the LCA a senior member of its Council for a period of two years, subject to earlier determination by the constituent body. Such delegate is to have responsibility for communications between the LCA and the constituent body.
- (6) The Policy Advisory Group (PAG) is to consist of one representative from each Section, together with three representatives of individual members appointed by the Executive for a term of two years. The PAG is to meet with the Executive to consider policy issues twice in each year and more often should the Executive so determine. PAG meetings will be at LCA cost. PAG decisions will be recommendations to the Executive. Each constituent body will receive notice of meeting and agenda material for PAG and be entitled to attend but not to vote and such attendance shall be at constituent body cost.
- (7) It is acknowledged that in principle it is highly desirable that the Australian Bar Association (ABA) and LCA co-operate with each other on matters relating to the legal profession.
- (8) The three year moratorium on proposals for constitutional change for which prior confirmation of support from all constituent bodies has not been obtained will continue until the AGM in 1989, save for any amendments to give effect to the foregoing.