



**THIRTY-SEVENTH PARLIAMENT**

**REPORT 26**

**STANDING COMMITTEE ON UNIFORM  
LEGISLATION AND STATUTES REVIEW**

**LEGAL PROFESSION BILL 2007**

Presented by Hon Simon O'Brien MLC (Chairman)

February 2008

## **STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW**

### **Date first appointed:**

17 August 2005

### **Terms of Reference:**

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **“8. Uniform Legislation and Statutes Review Committee**

- 8.1 *A Uniform Legislation and Statutes Review Committee* is established.
- 8.2 The Committee consists of 4 Members.
- 8.3 The functions of the Committee are -
- (a) to consider and report on Bills referred under SO 230A;
  - (b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
  - (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
  - (d) to review the form and content of the statute book;
  - (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
  - (f) to consider and report on any matter referred by the House or under SO 125A.
- 8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.”

### **Members as at the time of this inquiry:**

Hon Simon O’Brien MLC (Chairman)

Hon Donna Faragher MLC

Hon Matt Benson-Lidholm MLC

Hon Sheila Mills MLC

### **Staff as at the time of this inquiry:**

Jan Paniperis, Committee Clerk

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**REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES  
REVIEW**

**IN RELATION TO THE**

**LEGAL PROFESSION BILL 2007**

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**1 REFERENCE AND PROCEDURE**

1.1 The Legal Profession Bill 2007 (the “Bill”) was introduced into the Legislative Council on 21 November 2007 by Hon Sue Ellery MLC, Minister for Child Protection representing the Attorney General (the “Minister”).

1.2 Following its Second Reading by the Minister, the Bill stood referred to this Committee pursuant to Standing Order 230A(3) which reads:

*Unless otherwise ordered, a Bill stands referred to the Uniform Legislation and Statutes Review Committee at the conclusion of the second reading speech of the Minister or Member in charge.*

1.3 The Committee is required to report to the Legislative Council on its inquiry into the Bill pursuant to Standing Order 230A(4) which reads:

*The Uniform Legislation and Statutes Review Committee, or other committee, receiving a Bill under subclause (3) is to present its final report not later than 30 days of the day of the reference (exclusive of the referral day) or such other period as may be ordered by the House.*

1.4 The last date for tabling the Committee’s report into the Bill is therefore 22 December 2007 or the first sitting date thereafter.

**2 INQUIRY PROCEDURE**

2.1 The Committee’s inquiry into the Bill proceeded by way of a hearing on 5 December 2007. Those invited to attend the hearing were:

- Mr Robert Meadows QC, Solicitor General for Western Australia and Instructing Officer on the Bill.
- Ms Helen Thomas, Acting Manager, Strategic Business Development, Court and Tribunal Services Division, Department of the Attorney General and Instructing Officer on the Bill.

- Ms Lee Harvey, Assistant Parliamentary Counsel and Principal Drafting Officer on the Bill.

- 2.2 In the event, the Solicitor General was unable to attend the hearing.
- 2.3 The Committee is grateful to the witnesses for their attendance and the assistance provided by them to the Committee. A transcript of the hearing is provided at Appendix 1.
- 2.4 The Committee provided the Instructing Officers on the Bill with a number of questions on notice, answers to which were tabled at the hearing by Ms Thomas. These questions and answers are reproduced at Appendix 2.

### **3 UNIFORM LEGISLATION**

- 3.1 National legislative schemes implementing uniform legislation take a variety of forms. Nine different structures, each with a varying degree of emphasis on national consistency or uniformity of laws and adaptability, have been identified. The structures are summarised in Appendix 3. The Bill most closely resembles the legislative structure referred to as ‘Structure 2’, with Western Australia passing proposed legislation in line with a nationally agreed model bill.
- 3.2 When examining uniform legislation, the Committee considers what are known as ‘fundamental legislative scrutiny principles’. Although not formally adopted by the Legislative Council as part of the Committee’s terms of reference, the Committee applies the principles as a convenient framework for the scrutiny of uniform legislation.<sup>1</sup> These principles are set out in Appendix 4.

### **4 REASON FOR REFERENCE**

- 4.1 In the Second Reading speech on the Bill, the Minister stated:

*... Western Australia has contributed to further reform of the regulation of the legal profession through its participation in the development of the national model bill on the legal profession. The national model bill was first publicly released on 4 May 2004, and the Attorney General signed a memorandum of understanding committing Western Australia to adopting the provisions of the national model*

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<sup>1</sup> For further background on fundamental legislative principles can be found in a report by the predecessor Committee, the Standing Committee on Uniform Legislation and General Purposes. Refer to Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, Report 23, *The Work of the Committee During the Second Session of the Thirty-Sixth Parliament - August 13 2002 to November 16 2004*, November 2004, pp4-9.

*bill. This commitment will be met through the enactment of the bill currently before the house.*<sup>2</sup>

4.2 A copy of the “National Legal Profession Memorandum of Understanding” (“MOU”) signed by the Attorney General of Western Australia is reproduced at Appendix 5.

4.3 Relevantly, clause 4 of the MOU provides for a “National Legal Profession Working Party” to be established subject to the direction of the Standing Committee of Attorneys-General (“SCAG”) for *inter alia*, the purposes of:

(a) *reporting to SCAG on the implementation, operation and maintenance of the core provisions of the model bill and model regulations*<sup>3</sup>

4.4 Also of relevance to this report, clause 5 of the MOU provides as follows:

*Each State and Territory will use its best endeavours to introduce to its parliament, as soon as practicable after the date of signing this Memorandum, Legislation ... giving effect to the model bill.*

4.5 The present second edition of the national model legal profession bill (“the model bill”) was released in August 2006.<sup>4</sup>

4.6 The Bill purports to implement the relevant provisions of the model bill. The Committee draws the attention of the House to the table reproduced at Appendix 6 which summarises the extent to which the “National Legal Profession” reforms have been implemented. The Instructing Officer on the Bill kindly tabled this document at the hearing.

## **5 THE LEGAL PROFESSION BILL 2007**

5.1 The Bill ranges across 714 clauses and almost 500 pages. In the Minister’s Second Reading speech the Bill was compared to the current *Legal Practice Act 2003* in the following terms:

*The Legal Practice Act did not deal in substance in areas such as costs, admission, reservation of legal work, trust accounts, fidelity funds and complaints and discipline. This was in keeping with various recommendations of the 2002 national competition policy review of the Legal Practitioners Act 1893 and related legislation that reform in*

<sup>2</sup> Hon Sue Ellery MLC, Minister for Child Protection representing the Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 21 December 2007, p7482.

<sup>3</sup> Sub-clause 4.2.

<sup>4</sup> <http://www.ag.gov.au/www/agd/agd.nsf/Page/RWPCA266A29D6E7A09CCA25717800126AC0>, (viewed on 18 January 2008).

*these areas be delayed until such time as a national approach had been determined. This outcome has now been achieved through the national model bill. The Legal Profession Bill deals with all these areas of regulation and updates the provisions in relation to ILPs, MDPs, foreign lawyers and practising certificates.*<sup>5</sup>

5.2 Other aspects of the Bill that were highlighted by the Minister in the Second Reading speech include:

- The Bill will “allow Western Australian regulatory bodies to exchange information with and refer matters to their interstate counterparts.”
- The Bill “retains the emphasis on protecting the interests of clients and the broader public.”
- The Bill “sets high standards for legal practitioners, but none that is substantially different from those that apply already.”
- The Bill provides “for ‘uplift’ whereby a client and a legal practitioner can enter into a formal costs agreement that would enable the practitioner to charge a higher fee than they would otherwise if there is a successful outcome. There are safeguards such as the 25 per cent cap on the uplift if the matter is of a litigious nature; that is, the uplift fee must not exceed 25 per cent of the legal costs otherwise payable.”
- The Bill retains the “prohibition on contingency fees ...; that is, those fees where the legal practitioner is paid a percentage of any award or settlement as their fee.”
- The Bill “also recognises that not all clients of legal practitioners require the same level of statutory protection. For example, in the area of costs disclosure, it is not necessary for legal practitioners to make the same level of disclosures to ‘sophisticated clients’ as to other clients, ‘sophisticated clients’ being public companies, government departments and the like.”
- The Bill “retains the structural elements of the current regulatory framework”.
- The “legal contribution trust operated under its own legislation, the Legal Contribution Trust Act 1967. This act, however, is to be repealed and its provisions imported into the [Bill].
- The “bill will introduce a new regulatory system for professional indemnity insurance”.<sup>6</sup>

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<sup>5</sup> Hon Sue Ellery MLC, Minister for Child Protection representing the Attorney General, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 21 December 2007, p7483.

<sup>6</sup> Id.



**6 IS THE BILL CONSISTENT WITH THE NATIONAL LEGAL PROFESSION  
MEMORANDUM OF UNDERSTANDING?**

- 6.1 A section-by-section comparison of the model bill with the Bill is reproduced at Appendix 7.
- 6.2 One of the Committee's concerns in its inquiry into the Bill was to determine the extent to which the Bill might vary from the model bill. In the course of the hearing on the Bill, the following exchange took place between the Chairman and the Instructing Officer:

***The CHAIRMAN:** One of our key purposes, of course, is to examine the bill before us and the extent to which it is in harmony with the intergovernmental agreement which gave rise to it. I note that you have provided detailed information just tabled, which will assist us in most of our inquiries in that respect. But one question I would ask now is this: is there any significant departure between the Legal Profession Bill 2007 and the intergovernmental agreement signed by the Attorneys General back in 2004?*

***Ms Thomas:** Not as far as I am aware, having read through the agreement and having looked at the bill. You will see from the table, "Legal Profession Bill 2007: Clauses of National Bill Omitted". With just two exceptions, the only clauses which we did not pick up from the national model bill were all classified as non-core. That means that they were not mandatory provisions, and most of them relate to - it is either an aspect of the legal profession that does not apply in WA - for example, the difference of having a split profession between solicitors and barristers, which still occurs in some jurisdictions but does not here; one is admitted as a legal practitioner in WA, and then one can choose whether to act as a solicitor, barrister or as both. Then the only two core provisions which we did not pick up were in relation to aspects around the legal profession rules. Again, that, I think, reflects the fact that we have a slightly different approach here in Western Australia to other jurisdictions. Our primary regulator in Western Australia is the Legal Practice Board, and that is a statutory body which has been in place for some time now. In some other*

*jurisdictions, the primary regulator is still their law society. They deal with disciplinary matters, they issue practising certificates and what have you. Because our Legal Practice Board is a statutory body, its rules actually have the status of being subsidiary legislation, which means that they are subject to external and public scrutiny through that process. Therefore, the provisions about public notice of proposed legal profession rules did not really seem to be appropriate for the way in which we deal with legal profession rules in this state.*

*In relation to availability of rules, the Legal Practice Board does actually have a link on its website to the legal profession rules, which are to be found on the State Law Publisher's website. Therefore, we did not really think it was necessary to legislate for the board to actually do something that it is already doing. However, it was discussed in the Legislative Assembly whether or not it should be a little bit easier for people to actually find the rules on the Legal Practice Board, and during the debate in the Legislative Assembly, the Attorney General undertook to write to the board to suggest that it actually put the rules up-front on its website ...*

- 6.3 The table referred to in the extract above, entitled "Legal Profession Bill 2007 - Clauses of National Model Bill Omitted" is reproduced at Appendix 8.

## **7 FURTHER AMENDMENTS TO THE BILL**

- 7.1 The Committee has since been advised of a number of proposed amendments to the Bill. This advice came from the Instructing Officer on the Bill by means of email correspondence dated 17 December 2007. The relevant information received from the Instructing Officer is as follows:

*Further to the responses provided to the Uniform Legislation and Statutes Committee for its hearing into the Legal Profession Bill 2007 on 5 December 2007, the following updated information is provided. At the time the responses were provided there was no intention to introduce amendments or any other changes to this Bill. However, the instructing officers for the Bill met on 11 December 2007 to consider requests from the Legal Practice Board and the Legal Practitioners Complaints Committee for changes to the Bill. The*

*instructing officers have determined that the Bill would be enhanced by adopting some of these suggested changes and intend recommending to the Attorney General that the Bill be amended to incorporate them.*

*There are expected to be around seven proposed amendments in total. Of these, five amendments (to clauses 55, 76, 433, 523 and 524) would relate to non-core provisions of the National Model Bill on the Legal Profession and are relatively minor. One amendment (to clause 225(1) concerning liens over moneys held in trust accounts) would relate to a core-uniform provision but, in accordance with clause 5.2 of the Memorandum of Understanding, the proposed amendment would not be in conflict with or undermine the related National Model Bill provision (clause 3.3.23) and is intended to clarify the meaning of that clause. The final amendment would be to a provision (clause 18) that does not appear in the National Model Bill; this amendment would also be a clarification of the meaning of the clause.*

- 7.2 At the time of consideration of the Bill no Supplementary Notice Paper was lodged showing in legislative form the proposed amendments notified on 17 December 2007.
- 7.3 The Committee is therefore satisfied that the Bill does, indeed, give effect to the National Legal Profession Memorandum of Understanding.
- 7.4 In light of the foregoing, the Committee makes the following finding:

**Finding**

The Committee finds that the Legal Profession Bill 2007, as drafted, is consistent with the “*National Legal Profession Memorandum of Understanding*”.



**Hon Simon O'Brien MLC**  
Chairman

19 February 2008



**APPENDIX 1**  
**TRANSCRIPT OF EVIDENCE 05/12/07**



**APPENDIX 1**  
**TRANSCRIPT OF EVIDENCE 05/12/07**

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**STANDING COMMITTEE ON  
UNIFORM LEGISLATION AND STATUTES REVIEW**

**LEGAL PROFESSION BILL 2007**

**TRANSCRIPT OF EVIDENCE TAKEN  
AT PERTH  
WEDNESDAY, 5 DECEMBER 2007**

**SESSION TWO**

**Members**

**Hon Simon O'Brien (Chairman)**  
**Hon Matthew Benson-Lidholm**  
**Hon Donna Faragher**  
**Hon Sheila Mills**

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**Hearing commenced at 10.24 am**

**THOMAS, MS HELEN**

**Acting Manager, Strategic Business Development, Court and Tribunal Services Division,  
Department of the Attorney General,  
International House, 26 St Georges Terrace,  
Perth 6000, sworn and examined:**

**HARVEY, MS LEE**

**Deputy Parliamentary Counsel, Parliamentary Counsel's Office,  
Level 11, 141 St Georges Terrace,  
Perth, 6000, sworn and examined:**

**The CHAIRMAN:** On behalf of the committee, I would like to welcome our witnesses to the meeting. Firstly, I notice that Ms Helen Thomas has stayed on from our earlier hearing, so thank you again for being with us. But just for the record for this separate hearing, if I could ask you to please state your full name, contact address and the capacity in which you appear before the committee?

**Ms Thomas:** Helen Thomas, Court and Tribunal Services Division of the Department of the Attorney General, Level 15, International House, 26 St Georges Terrace, Perth, and I am an instructing officer for this bill.

**The CHAIRMAN:** Thanks very much.

**Ms Harvey:** Lee Harvey, Deputy Parliamentary Counsel, Level 11, 141 St Georges Terrace. I am the drafter of the Legal Profession Bill.

**The CHAIRMAN:** Ms Thomas, we already have your "Information for Witnesses" form, so if I could ask Ms Harvey: have you read and understood a document entitled "Information for Witnesses"?

**Ms Harvey:** Yes, I have.

**The CHAIRMAN:** Okay; and have you signed that document?

**Ms Harvey:** Yes.

**The CHAIRMAN:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing, for the record. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

**Ms Thomas** has already been sworn in once this morning as a witness, and I am sure that is enough; but, Jan, if you could swear in Ms Harvey, please.

[Witness took the affirmation.]



**The CHAIRMAN:** We are inquiring into the Legal Profession Bill, and if I could ask our witnesses if they have any opening statement to offer the committee with respect to the bill?

**Ms Thomas:** The Legal Profession Bill represents Western Australia's completion of its undertaking to the Standing Committee of Attorneys General to reform the regulation of the legal profession in this state. This reform process actually began with the Legal Practice Act 2003, where we introduced some provisions of the then draft national model bill in relation to incorporated legal practices, multidisciplinary partnerships, regulation of foreign lawyers and some aspects of interstate practice. This bill now completes the reform process, and it brings us into line with the other jurisdictions across the country. The reasons for having a more nationally uniform approach to the regulation of legal profession is it reflects the changing nature of the legal services sector, with more firms practising nationally. So, it provides greater continuity for firms and their practitioners so that they can move more freely across state borders, but also then work within a very consistent regulatory framework and are not sort of subject to different standards of regulation, regardless of which particular jurisdiction they actually happen to be appearing in or dealing with a matter. That is the rationale behind the bill.

**The CHAIRMAN:** Thank you for that. Thank you also for responding to some questions that we provided on notice in advance of this meeting. There is provided a schedule of answers to questions on notice numbered 1.1 to 1.8, and accompanied by an attachment called "Appendix 1: National Model Bill Provisions And Matching Legal Profession Bill 2007 Clauses", and a second appendix "National Model Bill Provisions Omitted From the Legal Profession Bill 2007". So, Ms Thomas, could I just ask you to perhaps formally table those -

**Ms Thomas:** Yes; I formally table those documents.

**The CHAIRMAN:** - and we will receive those answers so tabled. Hon Donna Faragher.

**Hon DONNA FARAGHER:** Could I ask just one quick question? I see there has been quite a level of consultation with legal practitioners. Is there strong support from the sector for this bill? Given, as you mentioned in terms of the movement across states and territories, I am assuming that they would be very supportive; is that right?

**Ms Thomas:** They are supportive, but, I mean, each of the groups whom we have consulted with have raised certain matters which they would prefer to have seen dealt with in some other way, but I believe that they all recognise that there is a need for greater consistency across jurisdictions, and we have received support.

[10.30 am]

**The CHAIRMAN:** One of our key purposes, of course, is to examine the bill before us and the extent to which it is in harmony with the intergovernmental agreement which gave rise to it. I note that you have provided detailed information just tabled, which will assist us in most of our inquiries in that respect. But one question I would ask now is this: is there any significant departure between the Legal Profession Bill 2007 and the intergovernmental agreement signed by the Attorneys General back in 2004?

**Ms Thomas:** Not as far as I am aware, having read through the agreement and having looked at the bill. You will see from the table, "Legal Profession Bill 2007: Clauses of National Bill Omitted". With just two exceptions, the only clauses which we did not pick up from the national model bill were all classified as non-core. That means that they were not mandatory provisions, and most of them relate to - it is either an aspect of the legal profession that does not apply in WA - for example, the difference of having a split profession between solicitors and barristers, which still occurs in some jurisdictions but does not here; one is admitted as a legal practitioner in WA, and then one can choose whether to act as a solicitor, barrister or as both. Then the only two core provisions which we did not pick up were in relation to aspects around the legal profession rules. Again, that, I think, reflects the fact that we have a slightly different approach here in Western Australia to other

jurisdictions. Our primary regulator in Western Australia is the Legal Practice Board, and that is a statutory body which has been in place for some time now. In some other jurisdictions, the primary regulator is still their law society. They deal with disciplinary matters, they issue practising certificates and what have you. Because our Legal Practice Board is a statutory body, its rules actually have the status of being subsidiary legislation, which means that they are subject to external and public scrutiny through that process. Therefore, the provisions about public notice of proposed legal profession rules did not really seem to be appropriate for the way in which we deal with legal profession rules in this state.

In relation to availability of rules, the Legal Practice Board does actually have a link on its website to the legal profession rules, which are to be found on the State Law Publisher's website. Therefore, we did not really think it was necessary to legislate for the board to actually do something that it is already doing. However, it was discussed in the Legislative Assembly whether or not it should be a little bit easier for people to actually find the rules on the Legal Practice Board, and during the debate in the Legislative Assembly, the Attorney General undertook to write to the board to suggest that it actually put the rules up-front on its website, and that is something we will organise for the Attorney General.

**The CHAIRMAN:** Perhaps, Ms Harvey, this might be best addressed to you. One of the questions we gave on notice is similar and has been addressed in general terms, so I just wonder if you might have some further comments. The first question I put to you is this: has the different legislative drafting style exhibited in the various jurisdictions presented any challenge for the drafting of this bill?

**Ms Harvey:** Not particularly. The states have been very careful to stay true to the model bill. It was drafted by a New South Wales retired drafter. The style in New South Wales is not significantly different from that in WA anyway. There are minor technical changes. For example, other states, when they are using a referential definition, will say, "Australian lawyer; see section 6". WA does not use that style. We would always say "has the meaning given in"; but they are very simple adaptations.

**The CHAIRMAN:** I guess what we want to try to establish is if those admittedly subtle changes between jurisdictions are going to materially affect the way in which the bill might be interpreted and applied across jurisdictions?

**Ms Harvey:** No. They are just drafting adaptations.

**The CHAIRMAN:** Because the idea, obviously, is to provide a uniformity for practitioners crossing between jurisdictions.

**Ms Harvey:** Absolutely, and it has been very carefully drafted to ensure that each state is the same on the significant detail.

**The CHAIRMAN:** We have some information already provided about the progress of legislation in the other jurisdictions. Can I just ask if there is anything further you can tell us about where the other jurisdictions are at in terms of their legislation being in practice? The sense of asking that question is: have we got legal practitioners already freely moving between other jurisdictions and maybe Western Australia the odd one out?

**Ms Thomas:** When we introduced the Legal Practice Act in 2003, we incorporated provisions relating to interstate practice, which brought us into what is referred to as the national practising certificate scheme, so we largely dealt with that issue then. That meant that WA lawyers could practise in the eastern states and vice versa; eastern states lawyers could come into WA and practise. We already do have a certain amount of movement across jurisdictions. But I do have another table here which was sourced from the New South Wales Attorney General's Department, who provide the secretariat service for this particular project on the national legal profession implementation, which has all the enactments and commencement dates across the jurisdictions.

**The CHAIRMAN:** We will receive that document as tabled. Thanks very much. That is just the sort of thing we need.

**Hon DONNA FARAGHER:** I suppose just in terms of going back to the consultation, what are or were some of the concerns raised by other practitioners, and have those concerns been alleviated in any way in relation to the bill? Were they serious concerns?

**Ms Thomas:** There were some provisions which we have included at the request of the local regulators. For example, there are provisions requiring interstate lawyers establishing an office in Western Australia to provide certain information to the Legal Practice Board. Under the national model bill, there are various provisions relating to Australian foreign registered lawyers; so they are lawyers from overseas who are in Australia but they are only practising foreign law, so they are Australian registered foreign lawyers. The Legal Practice Board requested that the same notification requirements be placed on those lawyers should they come and establish an office in WA, so we included that at the Legal Practice Board's request. There were a number of instances such as that where we acceded to their request. But, as I said before, on occasion there were times when our local bodies wanted - something different to what was in the national model bill was around how do you establish where instructions are first received. The concern from the WA legal profession was that if a client in Western Australia, for example, calls a 1300 or an 1800 number, or goes to an email address for a firm, and if that email or that phone call is actually taken in another jurisdiction, does that mean that the jurisdiction's laws would apply? Now, we had actually argued that we believe that where the client is located should be the basis on which you determine which jurisdiction's laws apply. This is particularly concerned around things such as the costs provisions, around costs disclosure and those entitlements, and what happens if there is any sort of dispute around costs. However, the other jurisdictions were of the view that it should be where the instructions are received. We argued our case, but we were not successful. However, there is a process through the agreement and through the national working party on the legal profession that jurisdictions can lodge issues that they believe need to be addressed. So we are going to actually monitor that particular issue and see whether or not there is any particular problem. But there are some provisions in relation to costs which mean that the client and the solicitor can come to an agreement that some other jurisdiction's provisions actually apply; so in that situation the client could sort of say, "I've contacted your national office, but it's actually your WA office that's dealing with it, and I want WA law to apply."

[10.40 am]

**Hon DONNA FARAGHER:** Thank you.

**The CHAIRMAN:** Just one final question: will this bill give the ACCC any greater capacity to monitor competition in the legal profession?

**Ms Thomas:** Not that I am aware of.

**Ms Harvey:** Not, I would think, any more than it currently has. These are still state laws still.

**Ms Thomas:** All legal profession laws round about the late 1990s, early 2000, were subject to national competition policy reviews, and our Legal Practitioners Act 1893 was reviewed as part of that process, and we were required to provide updates through to the National Competition Council on how far we had progressed in adopting the recommendations of that particular review. We have not been asked for a good couple of years now, I would say, to actually provide updates to the National Competition Council in relation to legal profession reform. My understanding is that their focus has shifted somewhat, and we have not been asked to do anything for a while in relation to that.

**The CHAIRMAN:** This bill does not change the situation in Western Australia, then, with regards to competition policy?

**Ms Thomas:** I think what it means is that we are actually probably more compliant with national competition policy because we have actually opened up the local legal profession legal services market to practitioners from interstate coming here. For example, through incorporated legal practices, we have actually allowed businesses and multidisciplinary partnerships - businesses other than law firms - to actually engage in legal practice, to have a law arm to their corporation or to their partnership. In WA, we have led the way in some practices actually listing on the Stock Exchange as public companies. So I would sort of argue that over the course of the last few years, with the Legal Practice Act 2003 and this bill, that we are actually opening up the sector to more competition.

**The CHAIRMAN:** Thanks very much for your assistance this morning to both our witnesses. You have provided, particularly through tabled documents, a very large amount of information that will assist us in completing our inquiry. We certainly do not need to go through the bill clause by clause at this hearing, everyone will be glad to know. So thank you very much to our witnesses once again, and good morning.

**Hearing concluded at 10.44 am**

**APPENDIX 2**  
**QUESTIONS ON NOTICE**



## **APPENDIX 2**

### **QUESTIONS ON NOTICE**

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#### **LEGAL PROFESSION BILL 2007**

#### **COMMITTEE HEARING 5 DECEMBER 2007**

**MR ROBERT MEADOWS QC (INSTRUCTING OFFICER)**

**& HELEN THOMAS (INSTRUCTING OFFICER)**

#### **1 QUESTIONS ON NOTICE**

1.1 Are there any proposals to introduce amendments to this Bill?

*No*

1.2 Is there anything else you would like to see included in the Bill at this time?

*No*

1.3 Why was there not an explanatory memorandum for this Bill?

*An explanatory memorandum was prepared and presented when the Bill was introduced into the Legislative Assembly. The explanatory memorandum was sent from Caroline Wright of the Attorney General's office by email to Tina Beale at Parliament House for the Legislative Council on 21 November 2007. A copy of the explanatory memorandum is attached.*

1.4 What was the nature and extent of the consultation conducted with the Western Australian legal profession in the preparation of this Bill?

*There was widespread consultation, including a call for public submissions, during the 2002 National Competition Policy Review of the Legal Practitioners Act 1893 and related legislation. The results of this review have informed the development of this Bill.*

*Local stakeholders were consulted in the development of the National Model Bill on the Legal Profession upon which the Legal Profession Bill 2007 is based. Those consulted included the judiciary, the Legal Practice Board, the Law Society of Western Australia, the Western Australian Bar Association, the Legal Contribution Trust, the Legal Costs Committee, the then Legal Practitioners Disciplinary Tribunal, the Legal Practitioners Complaints*

*Committee, the Director of Public Prosecutions, the Department of Consumer and Employment Protection, the Legal Aid Commission, Women Lawyers of WA, the WA Criminal Lawyers Association, the WA Institute of Arbitrators and Mediators, and the Federation of Community Legal Centres.*

*There was further consultation with the principal stakeholders (eg the Legal Practice Board and the Law Society) when the National Model Bill was subsequently revised in 2005 and 2006.*

*In December 2006, the Legal Practice Board, the Legal Practitioners Complaints Committee, the Law Society and the WA Bar Association were sent drafts of the Legal Profession Bill. A draft was also subsequently sent to the Legal Contribution Trust. Submissions were received from the Board, the Complaints Committee, the Law Society and the Legal Contribution Trust, which were taken into consideration in the final preparation of the Bill.*

- 1.5 How many other jurisdictions have made the equivalent changes to those provided for in the Bill? When is it anticipated that the Model Bill will be adopted throughout the nation?

*All other jurisdictions, except South Australia, have enacted legislation adopting the Model Bill. Where the legislation has been enacted, it has commenced in all jurisdictions except Tasmania where it is expected to commence in 2008. The Legal Profession Bill 2007 (SA) is currently before the South Australian Parliament.*

- 1.6 Are there any potentially controversial constitutional issues raised by the proposed national scheme of professional recognition for legal professionals?

*Regulation of the legal profession has historically been a responsibility of State governments. Nevertheless, the Commonwealth does have the potential to step into this field relying on the corporations power in section 51(xx) and other heads of power in the Commonwealth Constitution. However, the Commonwealth has been an active participant in and advocate of the National Model Bill and has not given any indication that it intends to move into this area. It has not been suggested by the incoming Government that it will adopt any different approach.*

- 1.7 Is there a simplified schedule in existence showing the correspondence of the Bill to the Model Bill? If so, can this be provided to the Committee?

*Attached are tables showing the provisions of the Bill as they match those of the Model Bill and those provisions of the Model Bill which were not adopted by Western Australia.*



- 1.8 Has the different legislative drafting style exhibited in the various jurisdictions presented any challenges for PCO in the drafting of this Bill? Are these likely to materially affect the way in which judicial commentary on the Bill and its interstate counterparts can be interpreted and applied across jurisdictions?

*The provisions of the Model Bill have been classified as “core uniform” (mandatory provisions requiring textual uniformity), “core non-uniform” (mandatory provisions which do not require textual uniformity) and “non-core” (optional provisions). This has assisted in maintaining consistency for the primary areas requiring uniformity across jurisdictions. Western Australia has followed the wording of all Model Bill provisions to the maximum extent possible in the interests of maintaining consistency for purposes such as interpretation and application across jurisdictions. This approach has also been followed in the other jurisdictions.*



**APPENDIX 3**  
**IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION**



## APPENDIX 3

### IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

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The former Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements identified and classified nine legislative structures relevant to the issue of uniformity in legislation which were endorsed by the 1996 Position Paper entitled *Scrutiny of National Schemes of Legislation*. A brief description of each is provided below.

**Structure 1:** *Complementary Commonwealth-State or Co-operative Legislation.* The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's constitutional powers.

**Structure 2:** *Complementary or Mirror Legislation.* For matters which involve dual, overlapping, or uncertain division of constitutional powers, essentially identical legislation is passed in each jurisdiction.

**Structure 3:** *Template, Co-operative, Applied or Adopted Complementary Legislation.* Here a jurisdiction enacts the main piece of legislation, with the other jurisdictions passing Acts which do not replicate, but merely adopt that Act and subsequent amendments as their own.

**Structure 4:** *Referral of Power.* The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51 (xxxvii) of the Australian Constitution.

**Structure 5:** *Alternative Consistent Legislation.* Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation.

**Structure 6:** *Mutual Recognition.* Recognises the rules and regulations of other jurisdictions. Mutual recognition of regulations enables goods or services to be traded across jurisdictions. For example, if goods or services to be traded comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

**Structure 7:** *Unilateralism.* Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.

**Structure 8:** *Non-Binding National Standards Model.* Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.

**Structure 9:** *Adoptive Recognition.* A jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.



**APPENDIX 4**  
**FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES**





## APPENDIX 4

### FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

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<b>Does the legislation have sufficient regard to the rights and liberties of individuals?</b>
--

1. **Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?**
2. **Is the Bill consistent with principles of natural justice?**
3. **Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?** Sections 44(8)(c) and (d) of the *Interpretation Act 1984*. The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.
4. **Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?**
5. **Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?**
6. **Does the Bill provide appropriate protection against self-incrimination?**
7. **Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?**
8. **Does the Bill confer immunity from proceeding or prosecution without adequate justification?**
9. **Does the Bill provide for the compulsory acquisition of property only with fair compensation?**
10. **Does the Bill have sufficient regard to Aboriginal tradition and Island custom?**
11. **Is the Bill unambiguous and drafted in a sufficiently clear and precise way?**

<b>Does the Bill have sufficient regard to the institution of Parliament?</b>
---

12. **Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?**
13. **Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?**
14. **Does the Bill allow or authorise the amendment of an Act only by another Act?**
15. **Does the Bill affect parliamentary privilege in any manner?**
16. **In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?**



**APPENDIX 5**  
***NATIONAL LEGAL PROFESSION MOU***



## APPENDIX 5

### *NATIONAL LEGAL PROFESSION MOU*

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2004/5523



#### NATIONAL LEGAL PROFESSION MEMORANDUM OF UNDERSTANDING

64

DEPARTMENT OF JUSTICE	
File No:	2004/02454 -06
Rec'd	23 AUG 2004
ATTN	1. Cnts - Mgr Social Jst
	2. ....
	3. ....

#### BETWEEN

THE ATTORNEYS-GENERAL OF THE COMMONWEALTH OF AUSTRALIA, THE STATE OF NEW SOUTH WALES, THE STATE OF VICTORIA, THE STATE OF QUEENSLAND, THE STATE OF WESTERN AUSTRALIA, THE STATE OF SOUTH AUSTRALIA, THE STATE OF TASMANIA, THE NORTHERN TERRITORY AND THE AUSTRALIAN CAPITAL TERRITORY

#### WHEREAS –

- A. The Commonwealth and the States and Territories agree that:
- (a) the size and nature of the Australian legal services market is changing and Australian lawyers are increasingly competing with lawyers from other Australian jurisdictions
  - (b) the ability of Australian lawyers to work across Australian jurisdictions should be facilitated through the reduction of regulatory compliance costs
  - (c) there is a need for a uniform approach to the regulation of the legal profession in order to remove regulatory barriers to national legal practice, and
  - (d) there is a need for a uniform approach to the regulation of the legal practice in order to provide consistent protection to consumers of legal services across jurisdictions.
- B. The Parties have therefore agreed to the development and implementation of consistent standards for the regulation of the legal profession.
- C. The Parties have agreed that such consistent standards will be in the form of model legislation and regulations made, amended and implemented in accordance with the processes established in this Memorandum.

## IT IS AGREED THAT -

### 1. *Purpose*

- 1.1 The purpose of this Memorandum is to give effect to a national approach for the regulation of the legal profession within Australia.

### 2. *Interpretation*

- 2.1 In this Memorandum:

- (a) *core provision* is a uniform core provision or a non-uniform core provision
- (b) *uniform core provision* is a provision identified as such in the model bill or model regulations, and a provision that is agreed, in accordance with this Memorandum, at any time to be a uniform core provision
- (c) *non-uniform core provision* is a provision identified as such in the model bill or model regulations, and a provision that is agreed, in accordance with this Memorandum, at any time to be a non-uniform core provision
- (d) *legislation* includes a legislative instrument
- (e) *legislative instrument* means a legislative instrument of a State, Territory or the Commonwealth, within the meaning of the *Legislative Instruments Act 2003* (Cth)
- (f) *model bill* means the model bill covering the regulation of the legal profession first adopted by SCAG on [date of adoption of final version of model bill] as amended from time to time
- (g) *model regulations* means the model regulations adopted by SCAG on [date of adoption of final version of model regulations] as amended from time to time
- (g) *National Legal Profession Working Party* or *Working Party* means the Working Party established under Part 4

(h) *party* means the Commonwealth, each of the States, the Australian Capital Territory and the Northern Territory that has become a party to this Memorandum and not ceased to be a party under Part 12

(i) *SCAG* means the Standing Committee of Attorneys-General.

### **3. *Agreement regarding uniformity of the core provisions of the model bill and the model regulations***

3.1 The Parties agree to comply with the provisions of this Memorandum in order to achieve and maintain uniformity in respect of the uniform core provisions of the model bill and the model regulations.

### **4. *National Legal Profession Working Party***

4.1 SCAG is to establish a National Legal Profession Working Party as soon as possible after commencement of this Memorandum.

4.2 The Working Party will, subject to direction from SCAG, have the functions of:

- (a) reporting to SCAG on the implementation, operation and maintenance of the core provisions of the model bill and model regulations
- (b) considering and reporting on proposals to amend the model bill or the model regulations
- (c) considering and reporting on legislative proposals that may affect the operation of the model bill or the model regulations
- (d) considering and reporting on proposals affecting the provision of legal services or the regulation of the legal profession generally
- (e) acting as a forum for discussion of issues affecting the legal profession, and
- (f) undertaking any other functions as directed by SCAG.

4.3 The Working Party will comprise:

- (a) a representative nominated by each party

- (b) four representatives nominated by the Law Council of Australia
  - (c) subject to the agreement of SCAG, representatives of any other organisation.
- 4.4 The Working Party may invite any other person to attend its meetings as it considers necessary.
- 4.5 Matters for consideration and report may be referred to the Working Party by SCAG or may be raised by a member of the Working Party.
- 4.6 The Working Party will report on its activities to SCAG at least annually on or before the anniversary of the commencement of this Memorandum.

## **5. *Agreement to introduction of legislation giving effect to the model bill and the model regulations***

- 5.1 Each State and Territory will use its best endeavours to introduce to its Parliament, as soon as practicable after the date of signing this Memorandum, legislation, in accordance with clause 5.2, giving effect to the model bill.
- 5.2 Subject to clause 5.6, the legislation giving effect to the model bill will contain provisions that are:
  - (a) in the same terms as the uniform core provisions of the model bill, and
  - (b) consistent with the non-uniform core provisions of the model bill,and may contain additional provisions (being either those contained or identified in the model bill or otherwise), provided that such additional provisions do not conflict with, or undermine, any of the provisions enacted pursuant to clauses 5.2(a) and 5.2(b).
- 5.3 The States and Territories will notify each other of the date of introduction and commencement of the legislation to which this Part applies.
- 5.4 Subject to clause 5.6, the legislation to be made by each State and Territory to give effect to the model regulations will contain provisions that are:
  - (a) in the same terms as the uniform core provisions of the model regulations, and



- (b) consistent with the non-uniform core provisions of the model regulations,

and may contain additional provisions (being either those contained or identified in the model regulations or otherwise), provided that such additional provisions do not conflict with, or undermine, any of the provisions enacted pursuant to clauses 5.4(a) and 5.4(b).

5.5 Each State and Territory will use its best endeavours to bring into effect the model regulations so that they commence at the same time as the legislation to which this Part applies or as soon as possible thereafter.

5.6 Notwithstanding any other clause in this Memorandum, a State or Territory may choose not to introduce legislation permitting incorporated legal practices and multi-disciplinary partnerships. If, however, a State or Territory permits incorporated legal practices and multi-disciplinary partnerships then the provisions of this Memorandum apply and the legislation of the State or Territory giving effect to the model bill and regulations will contain provisions that are in the same terms as the uniform core provisions and consistent with the non-uniform core provisions.

## **6. *Amendment of core provisions of model bill or model regulations***

6.1 Where a party considers that:

- (a) the provisions of its legislation giving effect to the core provisions of the model bill or model regulations should be amended
- (b) the core provisions of the model bill or the model regulations should be amended
- (c) it is desirable to introduce or make legislation which would have the effect of significantly altering or affecting a core provision of the model bill or the model regulations, or
- (d) it is desirable to introduce or make legislation which would be inconsistent with the effect or operation of a core provision of the model bill or the model regulations,

that party will give notice of the proposed amendments to each member of SCAG and the matter will be considered at the next SCAG meeting, or if SCAG considers the matter to be urgent SCAG may agree to consider it out of session. The notice of the proposed amendments will be accompanied by a detailed statement of the reasons for, and the potential impact of, the proposed amendments.

- 6.2 To assist it in forming a view regarding the proposed amendments, SCAG may:
- (a) refer consideration of the proposed amendments to the Working Party for consideration and recommendations to SCAG
  - (b) request the Working Party to consult relevant stakeholders on the proposed amendments, and/or
  - (c) request further information about the proposed amendments.
- 6.3 Where SCAG agrees to amendments proposed under clause 6.1, the model bill or the model regulations (as the case may be) will be amended in accordance with SCAG's agreement and the State or Territory concerned may proceed with its proposed legislation.
- 6.4 Where SCAG has agreed to an amendment to the core provisions of the model bill or core regulations each State and Territory will use its best endeavours to secure the introduction, passage and commencement of legislation, or to secure the making and commencement of the legislative instrument, that gives effect to the agreed amendment as soon as practicable.
- 6.5 Where it is necessary for any amendment to take effect on the same date in all States and Territories, the States and Territories will consult each other on the date of commencement of legislation in order to ensure, as far as possible, that the same commencement date is adopted by all States and Territories.
- 6.6 The Commonwealth will use its best endeavours not to introduce a bill or make a legislative instrument that may significantly alter or affect the operation of a core provision of the model bill or the model regulations unless it has consulted all the other parties.
- 6.7 If a bill of the kind described in clause 6.6 is before the Commonwealth Parliament, the Commonwealth will use its best endeavours to give the other parties a reasonable time to consider and to comment on the proposed amendments.

## **7. *Non-core provisions of model bill***

7.1 Where a party considers that:

- (a) its legislation giving effect to a non-core provision of the model bill or model regulations should be amended,
- (b) the non-core provisions of the model bill or the model regulations should be amended,
- (c) it is desirable to introduce or make legislation which would have the effect of significantly altering or affecting a non-core provision of the model bill or the model regulations, or
- (d) it is desirable to introduce or make legislation which would be inconsistent with the effect or operation of a non-core provision of the model bill or the model regulations,

that party will give notice of the proposed amendments to the SCAG Secretariat. The SCAG Secretariat will refer the matter to the Working Party for consideration and report recommendations to the next meeting of SCAG including on whether the Working Party considers the non-core provisions of the model bill or regulations should be amended. If SCAG considers the matter to be urgent SCAG may agree to consider it out of session.

- 7.2 The notice of the proposed amendments referred to in clause 7.1 will be accompanied by a statement of the reasons for, and the potential impact of, the proposed amendments.
- 7.3 Where SCAG agrees to amendments proposed under clause 7.1, the model bill or the model regulations (as the case may be) will be amended in accordance with SCAG's agreement.
- 7.4 In the interests of ongoing consistency, all States and Territories will consider whether it is appropriate to introduce similar amendments to those proposed.

## **8. *Legislation significantly affecting the provision of legal services***

- 8.1 Subject to clause 8.3, where a party considers that it is desirable to introduce or make legislation which significantly affects the provision of legal services or the regulation

of the legal profession it will give reasonable notice to the SCAG Secretariat. The SCAG Secretariat will refer the matter to the Working Party for consideration and report to SCAG on any matters of significance. If SCAG considers the matter to be urgent SCAG may agree to consider it out of session.

- 8.2 The notification required by clause 8.1 will describe the reason for the proposed amendments, the relevant provisions of the proposed legislation and the manner in which the provisions would alter the effect, scope or operation of the law.
- 8.3 Clause 8.1 does not apply to legislation that does not affect national legal practice such as legislation that creates a new regulatory body, or allocates regulatory functions to different regulatory bodies or alters provisions relating to funding for regulation.

## **9. Identification of Provisions**

- 9.1 When agreeing to amendments to the model bill or the model regulations under Parts 6 or 7, SCAG will identify whether any provisions introduced or modified by the proposed amendments are intended to be:
- (a) uniform core provisions of the model bill or the model regulations
  - (b) non-uniform core provisions of the model bill or the model regulations,  
or
  - (c) non-core provisions of the model bill or the model regulations.

## **10. Commencement of this memorandum**

- 10.1 This Memorandum commences when it has been signed on behalf of the Commonwealth and all States and Territories.

## **11. Amendment of this Memorandum**

- 11.1 Amendments to this Memorandum may only be made with the written consent of all parties.
- 11.2 Any amendments made to this Memorandum will be contained in a document which is distributed to all parties and which will include a reference to the date the amendment will come into force.

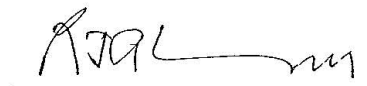
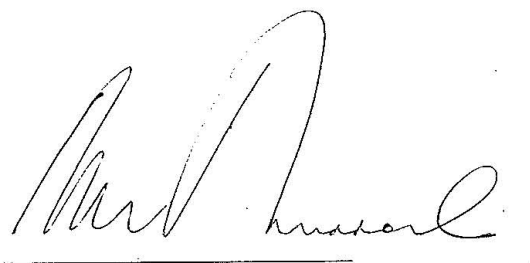
## 12. Withdrawal from this Memorandum

12.1 A party may withdraw from this Memorandum by giving not less than 12 months notice, in writing, to each of the other parties.

12.2 If a party withdraws from this Memorandum, this Memorandum will remain in force in relation to the remaining parties.

IN WITNESS WHEREOF this Memorandum has been executed as at the \_\_\_\_\_ day of \_\_\_\_\_ 2004.

SIGNED by the Honourable P Ruddock MP, Attorney-General of the Commonwealth of Australia, in the presence of:


SIGNED by the Honourable B Debus MP, Attorney General of the State of New South Wales, in the presence of:




SIGNED by the Honourable R Hulls MP, Attorney-General of the State of Victoria, in the presence of:




SIGNED by the Honourable R Welford MP, Attorney-General and Minister for Justice of the State of Queensland, in the presence of:




SIGNED by the Honourable J A McGinty MLA, Attorney General of the State of Western Australia, in the presence of:

\_\_\_\_\_  
SIGNED by the Honourable M Atkinson MP, Attorney-General and Minister for Justice of the State of South Australia, in the presence of:

\_\_\_\_\_  

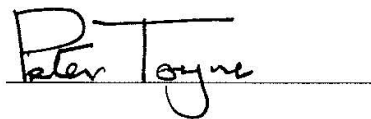

\_\_\_\_\_  


SIGNED by the Honourable Judy Jackson MHA, Attorney General and Minister for Justice and Industrial Relations of the State of Tasmania, in the presence of:

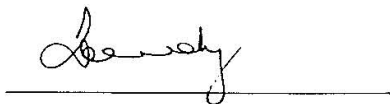
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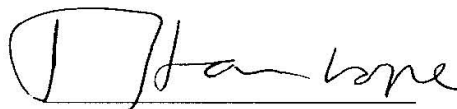

SIGNED by the Honourable Dr P Toyne MLA, Minister for Justice and Attorney-General of the Northern Territory, in the presence of:

\_\_\_\_\_  


\_\_\_\_\_  


SIGNED by Mr J Stanhope MP, Attorney General of the Australian Capital Territory, in the presence of:

\_\_\_\_\_  


\_\_\_\_\_  


## **12. Withdrawal from this Memorandum**

12.1 A party may withdraw from this Memorandum by giving not less than 12 months notice, in writing, to each of the other parties.

12.2 If a party withdraws from this Memorandum, this Memorandum will remain in force in relation to the remaining parties.

IN WITNESS WHEREOF this Memorandum has been executed as at the \_\_\_\_\_ day of 2004.

SIGNED by the Honourable P  
Ruddock MP, Attorney-General of  
the Commonwealth of Australia, in  
the presence of:

\_\_\_\_\_  
SIGNED by the Honourable B  
Debus MP, Attorney General of the  
State of New South Wales, in the  
presence of:

\_\_\_\_\_  
SIGNED by the Honourable R  
Hulls MP, Attorney-General of the  
State of Victoria, in the presence  
of:

\_\_\_\_\_  
SIGNED by the Honourable R  
Welford MP, Attorney-General and  
Minister for Justice of the State of  
Queensland, in the presence of:

SIGNED by the Honourable J A  
McGinty MLA, Attorney General  
of the State of Western Australia,  
in the presence of:

swafford

J. McGinty

SIGNED by the Honourable M  
Atkinson MP, Attorney-General  
and Minister for Justice of the State  
of South Australia, in the presence  
of:

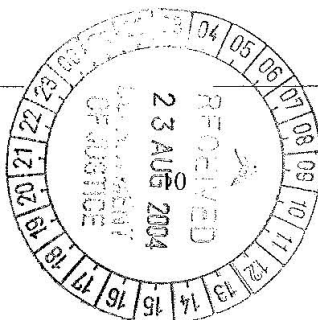
SIGNED by the Honourable Judy  
Jackson MHA, Attorney General  
and Minister for Justice and  
Industrial Relations of the State of  
Tasmania, in the presence of:

R. M. Nutton

Judy Jackson

SIGNED by the Honourable Dr P  
Toyne MLA, Minister for Justice  
and Attorney-General of the  
Northern Territory, in the presence  
of:

SIGNED by Mr J Stanhope MP,  
Attorney General of the Australian  
Capital Territory, in the presence  
of:





**APPENDIX 6**  
**NATIONAL LEGAL PROFESSION IMPLEMENTATION**



## APPENDIX 6

### NATIONAL LEGAL PROFESSION IMPLEMENTATION

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#### National Legal Profession Implementation

NSW	Enacted	Legal Profession Act 2004 Legal Profession Further Amendment Act 2006 (adopting revised model laws) Legal Profession Regulation Amended 2007	Assent 21.12.04 Commenced 1.10.05  Commenced 1.7.07 Commenced 1.7.07
VIC	Enacted	Legal Profession Act 2004 Amendment Act (adopting revised model laws)	Assent 14.12.04 Commenced 12.12.05 Commenced 9.5.07 (third party payer provisions: 7.11.07)
QLD	Enacted	Legal Profession Act 2004 Legal Profession Act 2007 (re-enacted to adopt all of revised model laws)	1.7.04 (not trust accounts and costs) Commenced 1.7.07
WA	Enacted  Bill being finalised	Legal Practice Act 2003 Legal Profession Bill 2007 (re-enacting to adopt all of revised model laws)	Act other than Pt 8 1.01.04 Part 8: 1.04.04 Introduced 24 October 2007, expected to commence early 2008.
SA	Bill in Parliament	Legal Profession Bill 2007 (including ILP/MDP)	Spring Session 2007 Bill introduced 12 September, debate ongoing as at 1 November.
TAS	Enacted	Legal Profession Act 2007	Assent July 2007 Commencing early 2008
ACT	Enacted  Enacted	Legal Profession Act 2006 Amendment Act (adopting revised model laws)	Commenced 1.7.06 (trust accounts and costs commenced 1.10.07) Commenced 1.10.07
NT	Enacted	Legal Profession Act 2006 Legal Profession Regulations 2007 and Legal Profession Amendments (Transitional Disciplinary Matters) Regulations 2007	Commenced 31.3.07 (trust accounts: 1.7.07 costs 30.12.07)

Contact name and number: David Mitchell 9228 8090

Page 1 of 1



**APPENDIX 7**  
**SECTION-BY-SECTION COMPARISON TABLE**



# APPENDIX 7

## SECTION-BY-SECTION COMPARISON TABLE

### LEGAL PROFESSION NATIONAL MODEL BILL PROVISIONS AND LEGAL PROFESSION BILL 2007 (WA)

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>Chapter 1</b>	Introduction	<b>Part 1</b>	Preliminary
<b>Part 1.1</b>	Preliminary	<b>Part 1</b>	Preliminary
<b>1.1.1 CU</b>	Citation	<b>1</b>	Short title
<b>1.1.2 CNU</b>	Commencement	<b>2</b>	Commencement
<b>1.1.3 NC</b>	Purposes		Long title
<b>Part 1.2</b>	Interpretation	<b>Part 2</b>	Interpretation
<b>1.2.1 NC with some CU</b>	Interpretation	<b>3</b>	Terms used in this Act
<b>1.2.2 CU</b>	Terms relating to lawyers	<b>4</b>	Terms relating to lawyers
<b>1.2.3 CU</b>	Terms relating to legal practitioners	<b>5</b>	Terms relating to legal practitioners
<b>1.2.4 CU</b>	Terms relating to associates and principals of law practices	<b>6</b>	Terms relating to associates and principals of law practices
<b>1.2.5 CU</b>	Home jurisdiction	<b>7</b>	Home jurisdiction
<b>1.2.6 CNU</b>	Suitability matters	<b>8</b>	Suitability matters
<b>1.2.7 CNU</b>	Information notices	<b>9</b>	Information notices
<b>1.2.8 CNU</b>	References to conviction for offences	<b>10</b>	References to conviction for offences
<b>Chapter 2</b>	General requirements for engaging in legal practice		
<b>Part 2.1</b>	Preliminary		
<b>Part 2.2</b>	Reservation of legal work and legal titles	<b>Part 3</b>	Reservation of legal work and related matters
<b>Division 1</b>	Preliminary	<b>Division 1</b>	Preliminary
<b>2.2.1 NC</b>	Purposes	<b>11</b>	Purposes
<b>Division 2</b>	Prohibitions	<b>Division 2</b>	General prohibitions on unqualified practice
<b>2.2.2 mainly CU</b>	Prohibition on engaging in legal practice when not entitled	<b>12</b>	Prohibition on engaging in legal practice when not entitled
<b>2.2.3 CU</b>	Prohibition on representing or advertising entitlement to engage in legal practice when not entitled	<b>13</b>	Prohibition on representing or advertising entitlement to engage in legal practice when not entitled
<b>2.2.4 NC</b>	Presumption about taking or using name, title or description specified in regulations	<b>14</b>	Presumption about taking or using name, title or description specified in regulations
<b>2.2.5 NC</b>	Associates who are disqualified or convicted persons	<b>15</b>	Associates who are disqualified or convicted persons
<b>Division 3</b>	General	<b>Division 3</b>	General
<b>2.2.6 CU</b>	Professional discipline	<b>19</b>	Professional discipline

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>Part 2.3</b>	Admission of local lawyers	<b>Part 4</b>	Admission of local lawyers
<b>Division 1</b>	Preliminary	<b>Division 1</b>	Preliminary
<b>2.3.1 NC</b>	Purposes	<b>20</b>	Purposes
<b>Division 2</b>	Eligibility and suitability for admission	<b>Division 2</b>	Eligibility and suitability for admission
<b>2.3.3 CNU</b>	Eligibility for admission	<b>21</b>	Eligibility for admission
<b>2.3.4 CNU (1); NC (2)</b>	Suitability for admission	<b>22</b>	Suitability for admission
<b>2.3.5 NC</b>	Early consideration of suitability	<b>23</b>	Early consideration of suitability
<b>Division 3</b>	Admission to the legal profession	<b>Division 3</b>	Admission to the legal profession
<b>2.3.6 CNU</b>	Admission	<b>25</b>	Application for admission
		<b>26</b>	Admission by the Supreme Court
<b>2.3.7 NC</b>	Conditions		<i>Not adopted</i>
<b>2.3.8 NC</b>	Roll of persons admitted to the legal profession	<b>28</b>	Roll of persons admitted to the legal profession
<b>2.3.9 CNU</b>	Local lawyer is officer of Supreme Court	<b>29</b>	Local lawyer is an officer of the Supreme Court
<b>Division 4</b>	Powers and functions of certifying body	<b>Division 4</b>	Functions of Legal Practice Board in relation to admissions
<b>2.3.10 NC</b>	Certifying body to advise on application for admission	<b>30</b>	Board to advise on applications for admission
<b>2.3.11 NC</b>	Compliance certificate	<b>31</b>	Compliance certificates
<b>2.3.12 NC</b>	Consideration of applicant's eligibility and suitability	<b>32</b>	Consideration of applicant's eligibility and suitability
<b>Division 5</b>	Miscellaneous	<b>Division 5</b>	Miscellaneous
<b>2.3.13 NC</b>	Supreme Court's jurisdiction		<i>Not adopted</i>
<b>2.3.14 NC</b>	Certifying body is respondent to applications under this Part	<b>33</b>	Board is respondent to applications under this Part
<b>2.3.15 NC</b>	Admission rules	<b>575</b>	Admission rules
<b>2.3.16 NC</b>	Savings and transitional provisions	<b>603</b>	Admission
<b>Part 2.4</b>	Legal practice by Australian legal practitioners	<b>Part 5</b>	Legal practice by Australian legal practitioners
<b>Division 1</b>	Preliminary	<b>Division 1</b>	Preliminary
<b>2.4.1 NC</b>	Purposes	<b>34</b>	Purposes
<b>Division 2</b>	Legal practice in this jurisdiction by Australian legal practitioners	<b>Division 2</b>	Legal practice in this jurisdiction by Australian legal practitioners
<b>2.4.2 CU</b>	Entitlement of holder of Australian practising certificate to practise in this jurisdiction	<b>35</b>	Entitlement of holder of Australian practising certificate to practise in this jurisdiction
<b>Division 3</b>	Local practising certificates generally	<b>Division 3</b>	Local practising certificates generally
<b>2.4.3 CNU (1), NC (2), CU (3)</b>	Local practising certificates	<b>37</b>	Local practising certificates
<b>2.4.4 CNU</b>	Suitability to hold local practising certificate	<b>38</b>	Suitability to hold local practising certificate
<b>2.4.5 CU &amp; NC</b>	Duration of local practising certificate	<b>39</b>	Duration of local practising certificate
<b>2.4.6 CNU</b>	Professional indemnity insurance	<b>40</b>	Professional indemnity insurance
<b>2.4.7 CU</b>	Local legal practitioner is officer of Supreme Court	<b>41</b>	Local legal practitioner is officer of Supreme Court



NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>Division 4</b>	Grant or renewal of local practising certificates	<b>Division 4</b>	Grant or renewal of local practising certificates
<b>2.4.8 CU &amp; NC</b>	Application for grant or renewal of local practising certificate	<b>42</b>	Application for grant or renewal of local practising certificate
<b>2.4.9 NC</b>	Manner of application and fees	<b>43</b>	Manner of application and fees
<b>2.4.10 NC</b>	Timing of application for renewal of local practising certificate	<b>44</b>	Timing of application for renewal of local practising certificate
<b>2.4.11 NC</b>	Grant or renewal of local practising certificate	<b>45</b>	Grant or renewal of local practising certificate
<b>Division 5</b>	Conditions on local practising certificates	<b>Division 5</b>	Conditions on local practising certificates
<b>2.4.12 NC</b>	Conditions generally	<b>46</b>	Conditions generally
<b>2.4.13 NC</b>	Conditions imposed by [appropriate authority]	<b>47</b>	Conditions imposed by Board
<b>2.4.14</b>	Imposition or variation of conditions pending criminal proceedings	<b>48</b>	Imposition or variation of conditions pending criminal proceedings
<b>2.4.15 CNU</b>	Statutory condition regarding conditions imposed on interstate admission	<b>49</b>	Conditions imposed on interstate admission
<b>2.4.16 CNU</b>	Statutory conditions regarding practice as [solicitor]	<b>50</b>	Restricted legal practice
<b>2.4.17 NC</b>	Statutory condition regarding notification of offence	<b>51</b>	Notification of offence
<b>2.4.18 NC</b>	Conditions imposed by legal profession rules	<b>52</b>	Conditions imposed by legal profession rules
<b>2.4.19 NC</b>	Compliance with conditions	<b>53</b>	Compliance with conditions
<b>Division 6</b>	Amendment, suspension or cancellation of local practising certificates	<b>Division 6</b>	Amendment, suspension or cancellation of local practising certificates
<b>2.4.20 NC</b>	Application of this Division	<b>54</b>	Application of this Division
<b>2.4.21 NC</b>	Grounds for amending, suspending or cancelling local practising certificate NC	<b>55</b>	Grounds for amending, suspending or cancelling local practising certificate NC
<b>2.4.22 NC</b>	Amending, suspending or cancelling local practising certificate	<b>56</b>	Amending, suspending or cancelling local practising certificate
<b>2.4.23 NC</b>	Operation of amendment, suspension or cancellation of local practising certificate	<b>57</b>	Operation of amendment, suspension or cancellation of local practising certificate
<b>2.4.24 NC</b>	Immediate suspension of local practising certificate	<b>58</b>	Immediate suspension of local practising certificate
<b>2.4.25 CNU</b>	Other ways of amending or cancelling local practising certificate	<b>59</b>	Other ways of amending or cancelling local practising certificate
<b>2.4.26 NC</b>	Relationship of this Division with Chapter 4	<b>60</b>	Relationship of this Division with Part 13
<b>Division 7</b>	Special powers in relation to local practising certificates – show cause events		Special powers in relation to local practising certificates – show cause events
<b>2.4.47 CNU</b>	Applicant for local practising certificate – show cause event	<b>61</b>	Applicant for local practising certificate – show cause event
<b>2.4.28 CNU</b>	Holder of local practising certificate – show cause event	<b>62</b>	Holder of local practising certificate – show cause event

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>2.4.29 CNU</b>	Refusal, amendment, suspension or cancellation of local practising certificate – failure to show cause	<b>63</b>	Refusal, amendment, suspension or cancellation of local practising certificate – failure to show cause
<b>2.4.30 NC</b>	Restriction on making further applications	<b>64</b>	Restriction on making further applications
<b>2.4.31 NC</b>	Relationship of this Division with Chapters 4 and 6	<b>60</b>	Relationship of this Division with Part 13
<b>Division 8</b>	Further provisions relating to local practising certificates	<b>Division 8</b>	Further provisions relating to local practising certificates
<b>2.4.32 NC</b>	Surrender and cancellation of local practising certificate	<b>59(1)(c)</b>	Other ways of amending or cancelling local practising certificate
<b>2.4.33 NC</b>	Return of local practising certificate	<b>67</b>	Return of local practising certificate
<b>Division 9</b>	Interstate legal practitioners	<b>Division 9</b>	Interstate legal practitioners
<b>2.3.34 CNU</b>	Requirement for professional indemnity insurance	<b>68</b>	Requirement for professional indemnity insurance
<b>2.4.35 CU</b>	Extent of entitlement of interstate legal practitioner to practise in this jurisdiction	<b>69</b>	Extent of entitlement of interstate legal practitioner to practise in this jurisdiction
<b>2.4.36 CU</b>	Additional conditions on practice of interstate legal practitioners	<b>70</b>	Additional conditions on practice of interstate legal practitioners
<b>2.4.37 CNU</b>	Special provisions about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction	<b>72</b>	Special provisions about interstate legal practitioner engaging in unsupervised legal practice in this jurisdiction
<b>2.4.38 CU</b>	Interstate legal practitioner is officer of Supreme Court	<b>73</b>	Interstate legal practitioner is officer of Supreme Court
<b>Division 10</b>	Miscellaneous	<b>Division 10</b>	Miscellaneous
<b>2.4.39 NC</b>	Protocols	<b>74</b>	Jurisdiction protocols
<b>2.4.40 NC</b>	Consideration and investigation of applicants or holders	<b>75</b>	Consideration and investigation of applicants or holders
<b>2.4.41 NC</b>	Register of local practising certificates	<b>76</b>	Register of local practising certificates
<b>2.4.42 NC</b>	Holders of local practising certificates as barristers		<i>Not adopted</i>
<b>2.4.43 NC</b>	Supreme Court orders about conditions	<b>77</b>	Orders about conditions
<b>2.4.44 NC</b>	Appeals or reviews	<b>78</b>	Review of decisions of Board
<b>2.4.45 CNU</b>	Government lawyers of other jurisdictions	<b>79</b>	Interstate government lawyers
<b>2.4.46 NC</b>	Fees	<b>80</b>	Fees
<b>2.4.47 NC</b>	Refund of fees		<i>Not adopted</i>
<b>2.4.48 CNU</b>	Savings and transitional provisions	<b>Part 19</b>	Repeal, savings, transitional and other provisions
<b>Part 2.5</b>	Suitability reports		<i>Not adopted</i>
<b>Part 2.6</b>	Inter-jurisdictional provisions regarding admission and practising certificates	<b>Part 6</b>	Inter-jurisdictional provisions regarding admission and practising certificates
<b>Division 1</b>	Preliminary	<b>Division 1</b>	Preliminary
<b>2.6.1 NC</b>	Purposes	<b>81</b>	Purposes
<b>2.6.2 NC</b>	Definitions		<i>Not adopted</i>

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>2.6.3</b>	Other requirements not affected	<b>82</b>	Other requirements not affected
<b>Division 2</b>	Notifications to be given by local authorities to interstate authorities	<b>Division 2</b>	Notifications to be given by local authorities to interstate authorities
<b>2.6.4 NC</b>	Official notification to other jurisdictions of applications for admission and associated matters	<b>83</b>	Official notification to other jurisdictions of applications for admission and associated matters
<b>2.6.5 CNU</b>	Official notification to other jurisdictions of removals from local roll	<b>84</b>	Official notification to other jurisdictions of removals from local roll
<b>2.6.6 NC</b>	[Appropriate authority] to notify other jurisdictions of certain matters	<b>85</b>	Board to notify other jurisdictions of certain matters
<b>Division 3</b>	Notifications to be given by lawyers to local authorities	<b>Division 3</b>	Notifications to be given by lawyers to local authorities
<b>2.6.7 CNU</b>	Lawyer to give notice of removal in another jurisdiction	<b>86</b>	Lawyer to give notice of removal in another jurisdiction
<b>2.6.8 NC</b>	Lawyer to give notice of interstate orders	<b>87</b>	Lawyer to give notice of interstate orders
<b>2.6.9 CNU</b>	Lawyer to give notice of foreign regulatory action	<b>88</b>	Lawyer to give notice of foreign regulatory action
<b>2.6.10 CNU</b>	Provisions relating to requirement to notify	<b>89</b>	Provisions relating to requirement to notify
<b>Division 4</b>	Taking of action by local authorities in response to notifications received	<b>Division 4</b>	Taking of action by local authorities in response to notifications received
<b>2.6.11 CNU</b>	Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction	<b>90</b>	Peremptory removal of local lawyer's name from local roll following removal in another jurisdiction
<b>2.6.12 NC</b>	Peremptory cancellation of practising certificate following removal of name from interstate roll	<b>91</b>	Peremptory cancellation of practising certificate following removal of name from interstate roll
<b>2.6.13 CNU</b>	Show cause procedure for removal of lawyer's name from local roll following foreign regulatory action	<b>92</b>	Show cause procedure for removal of lawyer's name from local roll following foreign regulatory action
<b>2.6.14 CNU</b>	Show cause procedure for cancellation of local practising certificate following regulatory action	<b>93</b>	Show cause procedure for cancellation of local practising certificate following regulatory action
<b>2.6.15 CNU</b>	Order for non-removal of name or non-cancellation of local practising certificate	<b>94</b> <b>95</b>	Order for non-removal of name Order for non-cancellation of local practising certificate
<b>2.6.16 CNU</b>	Local authority may give information to other local authorities	<b>96</b>	Local authority may give information to other local authorities
<b>Part 2.7</b>	Incorporated legal practices and multi-disciplinary partnerships	<b>Part 7</b>	Incorporated legal practices and multi-disciplinary partnerships
<b>Division 1</b>	Preliminary	<b>Division 1</b>	Preliminary
<b>2.7.1 NC</b>	Purposes	<b>97</b>	Purposes
<b>2.7.2 CU</b>	Definitions	<b>98</b>	Definitions
<b>Division 2</b>	Incorporated legal practices	<b>Division 2</b>	Incorporated legal practices providing legal services

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>2.7.3 mainly CU</b>	Nature of incorporated legal practice	<b>99</b>	Nature of incorporated legal practice
<b>2.7.4 CU</b>	Non-legal services and businesses of incorporated legal practices	<b>100</b>	Non-legal services and businesses of incorporated legal practices
<b>2.7.5 CU</b>	Corporations eligible to be incorporated legal practice	<b>101</b>	Corporations eligible to be incorporated legal practice
<b>2.7.6 mainly CU</b>	Notice of intention to start providing legal services	<b>102</b>	Notice of intention to start providing legal services
<b>2.7.7 NC</b>	Prohibition on representation that corporation is incorporated legal practice	<b>103</b>	Prohibition on representation that corporation is incorporated legal practice
<b>2.7.8 CU</b>	Notice of termination of provision of legal services	<b>104</b>	Notice of corporation ceasing to engage in legal practice
<b>2.7.9 CU</b>	Incorporated legal practice must have legal practitioner director	<b>105</b>	Incorporated legal practice must have legal practitioner director
<b>2.7.10 CU</b>	Obligations of legal practitioner director relating to misconduct	<b>106</b>	Obligations of legal practitioner director relating to misconduct
<b>2.7.11 CU</b>	Incorporated legal practice without legal practitioner director	<b>107</b>	Incorporated legal practice without legal practitioner director
<b>2.7.12 CU</b>	Obligations and privileges of practitioners who are officers or employees	<b>108</b>	Obligations and privileges of practitioners who are officers or employees
<b>2.7.13 CNU</b>	Professional indemnity insurance	<b>109</b>	Professional indemnity insurance
<b>2.7.14 CU</b>	Conflicts of interest	<b>110</b>	Conflicts of interest
<b>2.7.15 CU</b>	Disclosure obligations	<b>111</b>	Disclosure obligations
<b>2.7.16 CU</b>	Effect of non-disclosure on provision of certain services	<b>112</b>	Effect of non-disclosure on provision of certain services
<b>2.7.17 CU</b>	Application of legal profession rules	<b>113</b>	Application of legal profession rules
<b>2.7.18 CU</b>	Requirements relating to advertising	<b>114</b>	Requirements relating to advertising
<b>2.7.19 CU</b>	Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices	<b>115</b>	Extension of vicarious liability relating to failure to account, pay or deliver and dishonesty to incorporated legal practices
<b>2.7.20 CU</b>	Sharing of receipts, revenue or other income	<b>116</b>	Sharing of receipts, revenue or other income
<b>2.7.21 CU</b>	Disqualified persons	<b>117</b>	Disqualified persons
<b>2.7.22 CU</b>	Audit of incorporated legal practice	<b>118</b>	Audit of incorporated legal practice
<b>2.7.23 NC</b>	Application of Chapter 6	<b>118(7)</b>	Audit of incorporated legal practice
<b>2.7.24 CU</b>	Banning of incorporated legal practices	<b>119</b>	Banning of incorporated legal practices
<b>2.7.25 CU</b>	Disqualification from managing incorporated legal practice	<b>120</b>	Disqualification from managing incorporated legal practice
<b>2.7.26 CU</b>	Disclosure of information to Australian Securities and Investments Commission	<b>121</b>	Disclosure of information to Australian Securities and Investments Commission
<b>2.7.27 CU</b>	External administration proceedings under Corporations Act 2001 (Cth)	<b>122</b>	External administration proceedings under Corporations Act
<b>2.7.28 CU</b>	External administration proceedings under other legislation	<b>123</b>	External administration proceedings under other legislation

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>2.7.29 CU</b>	Incorporated legal practice that is subject to receivership under this Act and external administration under Corporations Act 2001 (Cth)	<b>124</b>	Incorporated legal practice that is subject to receivership under this Act and external administration under Corporations Act 2001 (Cth)
<b>2.7.30 CU</b>	Incorporated legal practice that is subject to receivership under this Act and external administration under other legislation	<b>125</b>	Incorporated legal practice that is subject to receivership under this Act and external administration under other legislation
<b>2.7.31 CU</b>	Co-operation between courts	<b>126</b>	Cooperation between courts
<b>2.7.32 CU</b>	Relationship of Act to constitution of incorporated legal practice	<b>127</b>	Relationship of Act to constitution of incorporated legal practice
<b>2.7.33 CU</b>	Relationship of Act to legislation establishing incorporated legal practice	<b>128</b>	Relationship of Act to legislation establishing incorporated legal practice
<b>2.7.34 CU</b>	Relationship of Act to Corporations legislation	<b>129</b>	Relationship of Act to Corporations legislation
<b>2.7.35 CU</b>	Undue influence	<b>130</b>	Undue influence
<b>Division 3</b>	Multi-disciplinary partnerships	<b>Division 3</b>	Multi-disciplinary partnerships
<b>2.7.36 CU</b>	Nature of multi-disciplinary partnership	<b>131</b>	Nature of multi-disciplinary partnership
<b>2.7.37 CU</b>	Conduct of multi-disciplinary partnership	<b>132</b>	Conduct of multi-disciplinary partnership
<b>2.7.38 CU</b>	Notice of intention to state practice in multi-disciplinary partnership	<b>133</b>	Notice of intention to state practice in multi-disciplinary partnership
<b>2.7.39 CU</b>	General obligations of legal practitioner partners	<b>134</b>	General obligations of legal practitioner partners
<b>2.7.40 CU</b>	Obligations of legal practitioner partner relating to misconduct	<b>135</b>	Obligations of legal practitioner partner relating to misconduct
<b>2.7.41 CU</b>	Actions of partner who is not an Australian legal practitioner	<b>136</b>	Actions of partner who is not an Australian legal practitioner
<b>2.7.42 CU</b>	Obligations and privileges of practitioners who are partners or employees	<b>137</b>	Obligations and privileges of practitioners who are partners or employees
<b>2.7.43 CU</b>	Conflicts of interest	<b>138</b>	Conflicts of interest
<b>2.7.44 CU</b>	Disclosure obligations	<b>139</b>	Disclosure obligations
<b>2.7.45 CU</b>	Effect of non-disclosure of provision of certain services	<b>140</b>	Effect of non-disclosure of provision of certain services
<b>2.7.46 CU</b>	Application of legal profession rules	<b>141</b>	Application of legal profession rules
<b>2.7.47 CU</b>	Requirements relating to advertising	<b>142</b>	Requirements relating to advertising
<b>2.7.48 CU</b>	Sharing of receipts, revenues or other income	<b>143</b>	Sharing of receipts, revenues or other income
<b>2.7.49 CU</b>	Disqualified persons	<b>144</b>	Disqualified persons
<b>2.7.50 CU</b>	Prohibition on partnerships with certain partners who are not Australian legal practitioners	<b>145</b>	Prohibition on partnerships with certain partners who are not Australian legal practitioners
<b>2.7.51</b>	Undue influence	<b>146</b>	Undue influence
<b>Division 4</b>	Miscellaneous	<b>Division 4</b>	Miscellaneous
<b>2.7.52 CU</b>	Obligations of individual practitioners not affected	<b>147</b>	Obligations of individual practitioners not affected
<b>2.7.53 CU</b>	Regulations	<b>148</b>	Regulations
<b>Part 2.8</b>	Legal practice by foreign lawyers	<b>Part 8</b>	Legal practice by foreign lawyers
<b>Division 1</b>	Preliminary	<b>Division 1</b>	Preliminary

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>2.8.1 NC</b>	Purpose	<b>149</b>	Purpose
<b>2.8.2 CU</b>	Definitions	<b>150</b>	Definitions
<b>2.8.3 CU</b>	This Part does not apply to Australian legal practitioners	<b>151</b>	This Part does not apply to Australian legal practitioners
<b>Division 2</b>	Practice of foreign law	<b>Division 2</b>	Practice of foreign law
<b>2.8.4 CU</b>	Requirement for registration	<b>152</b>	Requirement for registration
<b>2.8.5 CU</b>	Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction	<b>153</b>	Entitlement of Australian-registered foreign lawyer to practise in this jurisdiction
<b>2.8.6 CU</b>	Scope of practice	<b>154</b>	Scope of practice
<b>2.8.7 CU</b>	Form of practice	<b>155</b>	Form of practice
<b>2.8.8 CU</b>	Application of Australian professional ethical and practice standards	<b>156</b>	Application of Australian professional ethical and practice standards
<b>2.8.9 CU</b>	Designation	<b>157</b>	Designation
<b>2.8.10 CU</b>	Letterhead and other identifying documents	<b>158</b>	Letterhead and other identifying documents
<b>2.8.11 CU</b>	Advertising	<b>159</b>	Advertising
<b>2.8.12 CU</b>	Foreign lawyer employing Australian legal practitioner	<b>160</b>	Foreign lawyer employing Australian legal practitioner
<b>2.8.13 CNU</b>	Trust money and trust accounts	<b>161</b>	Trust money and trust accounts
<b>2.8.14 CU</b>	Professional indemnity insurance	<b>162</b>	Professional indemnity insurance
<b>2.8.15 CU</b>	Fidelity cover	<b>163</b>	Fidelity cover
<b>Division 3</b>	Local registration of foreign lawyers generally	<b>Division 3</b>	Local registration of foreign lawyers generally
<b>2.8.16 CU</b>	Local registration of foreign lawyers	<b>164</b>	Local registration of foreign lawyers
<b>2.8.17 CU</b>	Duration of registration	<b>165</b>	Duration of registration
<b>2.8.18 CU</b>	Locally registered foreign lawyer is not officer of the Supreme Court	<b>166</b>	Locally registered foreign lawyer is not officer of the Supreme Court
<b>Division 4</b>	Applications for grant or renewal of local registration	<b>Division 4</b>	Applications for grant or renewal of local registration
<b>2.8.19 CU</b>	Application for grant or renewal of registration	<b>167</b>	Application for grant or renewal of registration
<b>2.8.20 CU</b>	Manner of application	<b>168</b>	Manner of application
<b>2.8.21 CU</b>	Requirements regarding applications for grant or renewal of registration	<b>169</b>	Requirements regarding applications for grant or renewal of registration
<b>Division 5</b>	Grant or renewal of registration	<b>Division 5</b>	Grant or renewal of registration
<b>2.8.22 CU</b>	Grant or renewal of registration	<b>170</b>	Grant or renewal of registration
<b>2.8.23 CU</b>	Requirement to grant or renew registration if criteria satisfied	<b>171</b>	Requirement to grant or renew registration if criteria satisfied
<b>2.8.24 CU</b>	Refusal to grant or renew registration	<b>172</b>	Refusal to grant or renew registration
<b>Division 6</b>	Amendment, suspension or cancellation of local registration	<b>Division 6</b>	Amendment, suspension or cancellation of local registration
<b>2.8.25 CNU</b>	Application of this Division	<b>173</b>	Application of this Division
<b>2.8.26 CNU</b>	Grounds for amending, suspending or cancelling registration	<b>174</b>	Grounds for amending, suspending or cancelling registration
<b>2.8.27 CNU</b>	Amending, suspending or cancelling registration	<b>175</b>	Amending, suspending or cancelling registration

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>2.8.28 CNU</b>	Operation of amendment, suspension or cancellation of registration	<b>176</b>	Operation of amendment, suspension or cancellation of registration
<b>2.8.29 CNU</b>	Other ways of amending or cancelling registration	<b>177</b>	Other ways of amending or cancelling registration
<b>2.8.30 CNU</b>	Relationship of this Division with Chapter 4	<b>178</b>	Relationship of this Division with Part 13
<b>Division 7</b>	Special powers in relation to local registration – show cause events	<b>Division 7</b>	Special powers in relation to local registration – show cause events
<b>2.8.31 CNU</b>	Applicant for local registration – show cause event	<b>179</b>	Applicant for local registration – show cause event
<b>2.8.32 CNU</b>	Locally registered foreign lawyer – show cause event	<b>180</b>	Locally registered foreign lawyer – show cause event
<b>2.8.33 CNU</b>	Refusal, amendment, suspension or cancellation of local registration – failure to show cause	<b>181</b>	Refusal, amendment, suspension or cancellation of local registration – failure to show cause
<b>2.8.34 CNU</b>	Restriction on making further applications	<b>182</b>	Restriction on making further applications
<b>2.8.35 CNU</b>	Relationship of this Division with Chapters 4a and 6	<b>183</b>	Relationship of this Division with Part 13
<b>Division 8</b>	Further provisions relating to local registration	<b>Division 8</b>	Further provisions relating to local registration
<b>2.8.36 CNU</b>	Immediate suspension of registration	<b>184</b>	Immediate suspension of registration
<b>2.8.37 CNU</b>	Surrender of local registration certificate and cancellation of registration	<b>177(1)(c)</b>	Other ways of amending or cancelling registration
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<b>4.4.4 NC</b>	Further information and verification	<b>412</b>	Further information and verification
<b>4.4.5 NC</b>	Practitioner to be notified of complaint	<b>413</b>	Practitioner to be notified of complaint
<b>4.4.6 NC</b>	Submissions by practitioner	<b>414</b>	Submissions by practitioner
<b>4.4.7 NC</b>	Summary dismissal of complaints	<b>415</b>	Summary dismissal of complaints
<b>4.4.8 NC</b>	Withdrawal of complaints	<b>416</b>	Withdrawal of complaints
<b>Part 4.5</b>	Mediation	<b>Division 5</b>	Mediation
<b>4.5.1 NC</b>	Mediation of complaints	<b>417</b>	Mediation of complaints
<b>4.5.2 NC</b>	Definition		<i>Not adopted</i>
<b>4.5.3 NC</b>	Mediation of complaint involving consumer dispute solely		<i>Not adopted</i>
<b>4.5.4 NC</b>	Mediation of hybrid complaint		<i>Not adopted</i>
<b>4.5.5 NC</b>	Nature of mediation		<i>Not adopted</i>
<b>4.5.6 NC</b>	Facilitation of mediation	<b>418</b>	Facilitation of mediation
<b>4.5.7 NC</b>	Admissibility of evidence and documents	<b>419</b>	Admissibility of evidence and documents
<b>4.5.8 NC</b>	Protection from liability	<b>591(1)(h)</b>	Protection from liability
<b>Part 4.6</b>	Investigation of complaints	<b>Division 6</b>	Investigation by Complaints Committee
<b>4.6.1 NC</b>	Complaints to be investigated	<b>421</b>	Investigations
<b>4.6.2 NC</b>	Appointment of investigator	<b>Part 16, Division 3</b>	Law Complaints officer and staff
<b>4.6.3 NC</b>	Application of Chapter 6	<b>422</b>	Application of Part 15

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>4.6.4 NC</b>	Referral of matters for cost assessment	<b>423</b>	Referral of matters for cost assessment
<b>Part 4.7</b>	Decision of [appropriate authority]	<b>Division 7</b>	Decision of Complaints Committee
<b>4.7.1 NC</b>	Decision of [appropriate authority] after investigation	<b>424</b>	Decision of Complaints Committee after investigation
<b>4.7.2 NC</b>	Dismissal of complaint	<b>425</b>	Dismissal of complaint
<b>4.7.3 NC</b>	Summary conclusion of complaint procedure by fine or reprimand	<b>426</b>	Summary conclusion of complaint procedure
<b>4.7.4 NC</b>	Record of decision	<b>427</b>	Record of decision
<b>4.7.5 NC</b>	Reasons to be provided to complainant and practitioner	<b>432</b>	Complainant and practitioner to be informed of action taken
<b>Part 4.8</b>	General procedural matters	<b>Division 8</b>	General procedural matters
<b>4.8.1 NC</b>	Rules of procedural fairness	<b>430</b>	Procedure
<b>4.8.2 NC</b>	Duty to deal with complaints efficiently and expeditiously	<b>431</b>	Duty to deal with complaints efficiently and expeditiously
<b>4.8.3 NC</b>	Complainant and practitioner to be informed of action taken	<b>432</b>	Complainant and practitioner to be informed of action taken
<b>Part 4.9</b>	Proceedings in Disciplinary Tribunal	<b>Division 10</b>	Proceedings in State Administrative Tribunal
<b>4.9.1 NC</b>	Institution of proceedings	<b>428</b>	Referrals to State Administrative Tribunal
<b>4.9.2 NC</b>	Hearings		<i>Not adopted</i>
<b>4.9.3 NC</b>	Joinder		<i>Not adopted</i>
<b>4.9.4 NC</b>	Variation of information		<i>Not adopted</i>
<b>4.9.5 NC</b>	Nature of allegations		<i>Not adopted</i>
<b>4.9.6 NC</b>	Substitution of informant		<i>Not adopted</i>
<b>4.9.7 NC</b>	Rules of evidence		<i>Not adopted</i>
<b>4.9.8 NC</b>	Parties	<b>433</b>	Parties
<b>4.9.9 NC</b>	Public hearings	<b>434</b>	Proceedings generally not to be public
<b>4.9.10 NC</b>	Power to disregard procedural lapses		<i>Not adopted</i>
<b>4.9.11 CNU</b>	Determinations of Disciplinary Tribunal	<b>438</b>	Jurisdiction of State Administrative Tribunal
		<b>439</b>	Orders requiring official implementation in this jurisdiction
		<b>440</b>	Orders requiring official implementation in another jurisdiction
		<b>441</b>	Orders requiring compliance by practitioner
		<b>442</b>	Alternative finding
<b>4.9.12 NC</b>	Interlocutory and interim orders	<b>443</b>	Interlocutory and interim orders
<b>4.9.13 NC</b>	Compliance with determinations and orders	<b>446</b>	Compliance with orders
<b>4.9.14 NC</b>	Costs		<i>Not adopted</i>
<b>4.9.45 NC</b>	Notification of result of proceedings before Disciplinary Tribunal		<i>Not adopted</i>
<b>4.9.46 NC</b>	Other remedies not affected	<b>447</b>	Other remedies not affected



NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>Part 4.10</b>	Compensation	<b>Division 11</b>	Compensation
<b>4.10.1 NC</b>	Definition		<i>Not adopted</i>
<b>4.10.2 NC</b>	Compensation orders	<b>448</b>	Compensation orders
<b>4.10.3 NC</b>	Prerequisites to making of compensation orders	<b>449</b>	Prerequisites to making of compensation orders
<b>4.10.4 NC</b>	Making of compensation orders	<b>426(2)(c)</b>	Summary conclusion of complaint procedure
		<b>441(c)</b>	Orders requiring compliance by practitioner
<b>4.10.5 NC</b>	Enforcement of compensation orders	<b>426(4)</b>	Summary conclusion of complaint procedure
<b>4.10.6 NC</b>	Other remedies not affected	<b>450</b>	Effect on other remedies
<b>Part 4.11</b>	Publicising disciplinary action	<b>Division 12</b>	Publicising disciplinary action
<b>4.11.1 CNU</b>	Definitions	<b>451</b>	Definitions
<b>4.11.2 CNU</b>	Register of Disciplinary Action	<b>452</b>	Register of Disciplinary Action
<b>4.11.3 CNU</b>	Other means of publicising disciplinary action	<b>453</b>	Other means of publicising disciplinary action
<b>4.11.4 CNU</b>	Quashing of disciplinary action	<b>454</b>	Quashing of disciplinary action
<b>4.11.5 NC</b>	Liability for publicising disciplinary action	<b>455</b>	Liability for publicising disciplinary action
<b>4.11.6 CNU</b>	Disciplinary action taken because of infirmity, injury or illness	<b>456</b>	Disciplinary action taken because of infirmity, injury or illness
<b>4.11.7 CNU</b>	General	<b>457</b>	Effect of secrecy provisions and non-disclosure orders
<b>Part 4.12</b>	Inter-jurisdictional provisions	<b>Division 13</b>	Inter-jurisdictional provisions
<b>4.12.1 CNU</b>	Protocols	<b>458</b>	Conduct protocols
<b>4.12.2 CNU</b>	Request to another jurisdiction to investigate complaint	<b>459</b>	Request to another jurisdiction to investigate complaint
<b>4.12.3 NC</b>	Request from another jurisdiction to investigate complaint	<b>460</b>	Request from another jurisdiction to investigate complaint
<b>4.12.4 CNU</b>	Sharing of information with corresponding authorities	<b>461</b>	Sharing of information with corresponding authorities
<b>4.12.5 CNU</b>	Co-operation with other authorities	<b>462</b>	Cooperation with other authorities
<b>4.12.6 CNU</b>	Compliance with recommendations or orders made under corresponding laws	<b>463</b>	Compliance with recommendations or orders made under corresponding laws
<b>4.12.7 CNU</b>	Other powers or functions not affected	<b>464</b>	Other powers or functions not affected
<b>Part 4.13</b>	Miscellaneous	<b>Division 14</b>	Miscellaneous
<b>4.13.1 NC</b>	Jurisdiction of Supreme court	<b>465</b>	Jurisdiction of Supreme Court
<b>4.13.2 NC</b>	Information about complaints procedure		<i>Not adopted</i>
<b>4.13.2 NC</b>	Failure to comply with orders	<b>466</b>	Failure to comply with orders
<b>4.13.4 NC</b>	Performance criteria		<i>Not adopted</i>
<b>4.13.5 NC</b>	Reports to Minister	<b>571</b>	Reports
<b>4.13.6 NC</b>	Protection from liability	<b>591</b>	Protection from liability

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>4.13.7 NC</b>	Non-compellability of certain witnesses		<i>Not adopted</i>
<b>4.13.8 NC</b>	Confidentiality of client communications	<b>467</b>	Confidentiality of client communications
<b>4.13.9 NC</b>	Claims of privilege	<b>468</b>	Claims of privilege
<b>4.13.10 NC</b>	Waiver of privilege or duty of confidentiality	<b>469</b>	Waiver of privilege or duty of confidentiality
<b>Chapter 5</b>	External intervention	<b>Part 14</b>	External intervention
<b>Part 5.1</b>	Preliminary	<b>Division 1</b>	Preliminary
<b>5.1.1 NC</b>	Purposes	<b>470</b>	Purposes
<b>5.1.2 CU</b>	Definitions	<b>471</b>	Definitions
<b>5.1.3 CU</b>	Application of Chapter to Australian-registered foreign lawyers	<b>472</b>	Application of Part to Australian-registered foreign lawyers
<b>5.1.4 CU</b>	Application of Chapter to other persons	<b>473</b>	Application of Part to other persons
<b>Part 5.2</b>	Initiation of external intervention	<b>Division 2</b>	Initiation of external intervention
<b>5.2.1 CU</b>	Circumstances warranting external intervention	<b>474</b>	Circumstances warranting external intervention
<b>5.2.2 CU</b>	Determination regarding external intervention	<b>475</b>	Determination regarding external intervention
<b>Part 5.3</b>	Supervisors of trust money	<b>Division 3</b>	Supervisors of trust money
<b>5.3.1 CU</b>	Appointment of supervisor of trust money	<b>476</b>	Appointment of supervisor of trust money
<b>5.3.2 CU</b>	Notice of appointment	<b>477</b>	Notice of appointment
<b>5.3.3 CU</b>	Effect of service of notice of appointment	<b>478</b>	Effect of service of notice of appointment
<b>5.3.4 CU</b>	Role of supervisor of trust money	<b>479</b>	Role of supervisor of trust money
<b>5.3.5 CU</b>	Records of and dealing with trust money of law practice under supervision	<b>480</b>	Records of and dealing with trust money of law practice under supervision
<b>5.3.6 CU</b>	Termination of supervisor's appointment	<b>481</b>	Termination of supervisor's appointment
<b>Part 5.4</b>	Manager	<b>Division 4</b>	Managers
<b>5.4.1 CU</b>	Appointment of manager	<b>482</b>	Appointment of manager
<b>5.4.2 CU</b>	Notice of appointment	<b>483</b>	Notice of appointment
<b>5.4.3 CU</b>	Effect of service of notice of appointment	<b>484</b>	Effect of service of notice of appointment
<b>5.4.4 CU</b>	Role of manager	<b>485</b>	Role of manager
<b>5.4.5 CU</b>	Records and accounts of law practice under management and dealings with trust money	<b>486</b>	Records and accounts of law practice under management and dealings with trust money
<b>5.4.6 CU</b>	Deceased estates	<b>487</b>	Deceased estates
<b>5.4.7 CU</b>	Termination of manager's appointment	<b>488</b>	Termination of manager's appointment
<b>Part 5.5</b>	Receivers	<b>Division 5</b>	Receivers
<b>5.5.1 CU (option 1)</b>	Appointment of receiver by [appropriate authority]		<i>Not adopted</i>

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>5.5.2 CU (option 2)</b>	Appointment of receiver by Supreme Court		Appointment of receiver [by State Administrative Tribunal]
<b>5.5.3 CU</b>	Notice of appointment	<b>490</b>	Notice of appointment
<b>5.5.4 CU</b>	Effect of service of notice of appointment	<b>491</b>	Effect of service of notice of appointment
<b>5.5.5 mainly CU</b>	Role of receiver	<b>492</b>	Role of receiver
<b>5.5.6 CU</b>	Records and accounts of law practice under receivership and dealings with trust money	<b>493</b>	Records and accounts of, and dealing with trust money of, law practice under receivership
<b>5.5.7 CU</b>	Power of receiver to take possession of regulated property	<b>494</b>	Power of receiver to take possession of regulated property
<b>5.5.8 CU</b>	Power of receiver to take delivery of regulated property	<b>495</b>	Power of receiver to take delivery of regulated property
<b>5.5.9 CU</b>	Power of receiver to deal with regulated property	<b>496</b>	Power of receiver to deal with regulated property
<b>5.5.10 CU</b>	Power of receiver to require documents or information	<b>497</b>	Power of receiver to require documents or information
<b>5.5.11 CU</b>	Examinations	<b>498</b>	Examinations
<b>5.5.12 CU</b>	Lien for costs on regulated property	<b>499</b>	Lien for costs on regulated property
<b>5.5.13 CU</b>	Regulated property not to be attached	<b>500</b>	Regulated property not to be attached
<b>5.5.14 NC</b>	Receiver may recover money stolen or embezzled		<i>Not adopted</i>
<b>5.5.15 CU</b>	Recovery of regulated property where there has been a breach of trust	<b>501</b>	Recovery of regulated property where there has been a breach of trust
<b>5.5.16 CNU</b>	Improperly destroying property	<b>502</b>	Improperly destroying property
<b>5.5.17 CU</b>	Deceased estates	<b>503</b>	Deceased estates
<b>5.5.18 NC (option 1)</b>	Termination of receiver's appointment by [appropriate authority]		<i>Not adopted</i>
<b>5.5.19 NC (option 2)</b>	Termination of receiver's appointment	<b>504</b>	Termination of receiver's appointment
<b>Part 5.6</b>	General	<b>Division 6</b>	General
<b>5.6.1 CU</b>	Conditions on appointment of external intervener	<b>505</b>	Conditions on appointment of external intervener
<b>5.6.2 CU</b>	Status of acts of external intervener	<b>506</b>	Status of acts of external intervener
<b>5.6.3 CU</b>	Eligibility for reappointment or authorisation	<b>507</b>	Eligibility for reappointment or authorisation
<b>5.6.4 CU</b>	Appeal against appointment	<b>508</b>	Review of appointment
<b>5.6.5 CU</b>	Directions of Supreme Court	<b>509</b>	Directions of State Administrative Tribunal
<b>5.6.6 CU</b>	Manager and receiver appointed for law practice	<b>510</b>	Manager and receiver appointed for law practice
<b>5.6.7 mainly CU</b>	ADI disclosure requirements	<b>511</b>	ADI disclosure requirements
<b>5.6.8 CU</b>	Fees, legal costs and expenses	<b>512</b>	Fees, legal costs and expenses
<b>5.6.9 CU</b>	Reports by external intervener	<b>513</b>	Reports by external intervener
<b>5.6.10 CU</b>	Confidentiality	<b>514</b>	Confidentiality
<b>5.6.11 NC</b>	Provisions relating to requirements under this Part	<b>515</b>	Provisions relating to requirements under this Part

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>5.6.12 NC</b>	Obstruction of external intervener	<b>516</b>	Obstruction of external intervener
<b>5.6.13 CU</b>	Protection from liability	<b>591</b>	Protection from liability
<b>Chapter 6</b>	Investigatory powers	<b>Part 15</b>	Provisions relating to investigations
<b>Part 6.1</b>	Preliminary	<b>Division 1</b>	Preliminary
<b>6.1.1 NC</b>	Purpose of Chapter		<i>Not adopted</i>
<b>6.1.2 NC</b>	Definitions	<b>517</b>	Definitions
<b>Part 6.2</b>	Requirements relating to documents, information and other assistance	<b>Division 2</b>	Requirements relating to documents, information and other assistance
<b>6.2.1 NC</b>	Application of Part	<b>518</b>	Application of Division
<b>6.2.2 NC</b>	Requirements that may be imposed for investigations, examinations and audits under Parts 3.3 and 2.7	<b>519</b>	Requirements to provide access to documents and information relating to affairs of law practice
<b>6.2.3 NC</b>	Requirements that may be imposed for investigations under Chapter 4	<b>520</b>	Requirements in relation to complaint investigations
<b>6.2.4 NC</b>	Provisions relating to requirements under this Part	<b>521</b>	Provisions relating to requirements under this Division
<b>Part 6.3</b>	Entry and search of premises	<b>Division 3</b>	Entry and search of premises
<b>6.3.1 NC</b>	Application of Part	<b>518</b>	Application of Division
<b>6.3.2 NC</b>	Investigator's power to enter premises	<b>523</b>	Investigator's power to enter premises
<b>6.3.3 NC</b>	Search warrants	<b>524</b>	Search warrant
<b>6.3.4 NC</b>	Powers of investigator while on premises	<b>525</b>	Powers of investigator while on premises
<b>Part 6.4</b>	Additional powers in relation to incorporated legal practices	<b>Division 4</b>	Additional powers in relation to incorporated legal practices
<b>6.4.1 NC</b>	Application of Part	<b>526</b>	Application of Division
<b>6.4.2 NC</b>	Investigative powers relating to investigations and audits	<b>527</b>	Powers relating to investigations and audits to which this Division applies
<b>6.4.3 NC</b>	Examination of persons	<b>528</b>	Examination of persons
<b>6.4.4 NC</b>	Inspection of books	<b>529</b>	Inspection of books
<b>6.4.5 NC</b>	Power to hold hearings	<b>530</b>	Power to hold hearings
<b>6.4.6 NC</b>	Failure to comply with investigation		<i>Not adopted</i>
<b>Part 6.5</b>	Miscellaneous	<b>Division 5</b>	Miscellaneous
<b>6.5.1 NC</b>	Obstruction of investigator	<b>531</b>	Obstruction of investigator
<b>6.5.2 NC</b>	Obligation of Australian lawyers	<b>532</b>	Obligations of Australian lawyers
<b>6.5.3 NC</b>	Permitted disclosure of confidential information	<b>533</b>	Permitted disclosure of confidential information
<b>Chapter 7</b>	Regulatory authorities	<b>Part 16</b>	Regulatory authorities
<b>Chapter 8</b>	General	<b>Part 18</b>	General provisions
<b>Part 8.1</b>	General provisions		
<b>8.1.1 NC</b>	Delegation by [appropriate authority]	<b>547</b>	Delegation [by Legal Practice Board]
<b>8.1.2 CU</b>	Liability of principals	<b>584</b>	Liability of principals
<b>8.1.3 NC</b>	Injunctions	<b>585</b>	Injunctions

NATIONAL MODEL BILL CLAUSES		LEGAL PROFESSION BILL CLAUSES	
<b>8.1.4 NC</b>	Disclosure of information by local regulatory authorities	<b>586</b>	Disclosure of information by local regulatory authorities
<b>8.1.5 CNU</b>	Confidentiality of personal information	<b>587</b>	Confidentiality of personal information
<b>8.1.6 NC</b>	Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements	<b>588</b>	Professional privilege or duty of confidence does not affect validity of or compliance with certain requirements
<b>8.1.7 NC</b>	Duty to report suspected offences	<b>589</b>	Duty to report suspected offences
<b>Part 8.2</b>	Machinery provisions		
<b>8.2.1 NC</b>	Approved forms	<b>540</b>	Powers [of Legal Practice Board]
<b>8.2.2 NC</b>	Savings and transitional provisions	<b>Part 19</b>	Repeals, savings, transitional and other provisions
<b>8.2.3 NC</b>	Regulations	<b>596</b>	Regulations



**APPENDIX 8**  
**CLAUSES OF NATIONAL MODEL BILL OMITTED**





## APPENDIX 8

### CLAUSES OF NATIONAL MODEL BILL OMITTED

#### LEGAL PROFESSION BILL 2007

#### CLAUSES OF NATIONAL MODEL BILL OMITTED

Clause #	Status	Clause and comment
2.3.7	NC	<p><b>Conditions</b> Provides for Supreme court to impose conditions on a person's admission.</p> <p><i>WA does not use the concept of conditional admission. Conditions are placed on practising certificates.</i></p>
2.3.13	NC	<p><b>Supreme Court's jurisdiction</b> Provides that the Supreme Court's powers and jurisdiction under Part 2.3 [Admission of local lawyers] are exercisable by the Full Court or where permitted under the Admission Rules by a single judge.</p> <p><i>LP Bill 07 specifies in each reference to the Supreme Court whether it is referring to the Full Court.</i></p>
2.4.42	NC	<p><b>Holders of local practising certificates as barristers</b></p> <p><i>Not relevant to WA where there is no distinction made between barristers and solicitors.</i></p>
2.4.47	NC	<p><b>Refund of fees</b> Regulations can be made to provide for partial refund of fee paid in the event of a practising certificate being suspended or cancelled.</p> <p><i>The Interpretation Act 1984 provides that a power to make regulations in relation to fees includes a power to make regulations for the refund of fees. Additionally, WA made a policy decision December 2006 to not provide for the refund of fees given that the Board would still have faced the administrative costs associated with issuing the certificate.</i></p>
2.6.2	NC	<p><b>Definitions</b> Defines "certifying body" and "foreign regulatory action".</p> <p><i>Definition of "certifying body" not necessary because the relevant body is specified in each clause as necessary.</i></p> <p><i>Definition of "foreign regulatory action" included in clause 3.</i></p>
2.8.55	NC	<p><b>Refund of fees</b> Regulations can be made to provide for partial refund of fee paid in the event of a person's registration as a foreign lawyer being suspended or cancelled.</p> <p><i>The Interpretation Act 1984 provides that a power to make regulations in relation to fees includes a power to make regulations for the refund of fees. Additionally, WA made a policy decision December 2006 to not provide for the refund of fees given that the Board would still have faced the administrative costs associated with issuing the certificate.</i></p>
Part 2.9	NC	<p><b>Community legal centres</b> Allows for jurisdictions to insert local provisions.</p> <p><i>WA does not legislate specifically for community legal centres under legal profession legislation.</i></p>

Clause #	Status	Clause and comment
3.2.1	NC	<p><b>Purpose</b> Provides that the purpose of Part 3.2 [Manner of legal practice] 9 is to promote the maintenance of high standards of professional conduct etc.</p> <p><i>This Part deals with rules which are addressed in Part 17 of LP Bill 07. Part 17 does not include a purpose statement. The purpose statement in 3.2.1 would seem to apply to the whole Bill not just this Part and seems to be superfluous.</i></p>
3.2.5	CNU	<p><b>Public notice of proposed legal profession rules</b> Provides that the appropriate authority seeking to make a rule is to publish a notice to this effect and invite submissions.</p> <p><i>Under cl 583, the rules are given the status of subsidiary legislation. The procedure in this clause of the Model Bill is not that followed for making subsidiary legislation in this State. All subsidiary legislation is subject to disallowance once made, so is subject to external scrutiny.</i></p>
3.2.10	CNU	<p><b>Availability of rules</b> Provides that appropriate authority must ensure that the legal profession rules are available for inspection eg on its website.</p> <p><i>Under Part 17, Rules made under the LP Bill 07 will be subsidiary legislation and thus would be available from the State Law Publisher's website. This is the standard way for making subsidiary legislation available to the public and would seem to be sufficient. A link under "Legislation" on the Legal Practice Board's website takes one directly to the State Law Publisher site with further quick links to the relevant Act, Rules and Regulations. Although core non-uniform, this clause would seem to be superfluous.</i></p>
3.3.11	NC	<p><b>Barristers not to receive trust money</b></p> <p><i>Not relevant to WA where there is no distinction made between barristers and solicitors.</i></p>
3.3.41	NC	<p><b>Approval of ADIs</b> Provides for appropriate authorities to approve ADIs at which trust accounts to hold trust money may be maintained.</p> <p><i>WA policy decision in December 2006 to not include this clause on the basis that an ADI as defined in clause 3 is "an authorised deposit-taking institution as defined in the Banking Act 1959 of the Commonwealth". To have adopted this clause was considered to be an unnecessary step involving legal profession regulatory bodies intruding into the banking sector. There has been no evidence that there is a problem in WA with the approach in the LPA 2003 which requires only that an institution be an ADI. In its submission on the National Model Bill of June 2006, the Law Society said that a second tier of approval for ADIs was unnecessary.</i></p>
3.3.44	NC	<p><b>Statutory deposits</b> Provides for regulations to require a law practice to pay amounts out of a general trust account into an ADI account maintained by the appropriate authority</p> <p><i>Not a current practice in WA.</i></p>
3.4.40	NC	<p><b>How to make an application for costs assessment</b> Provides for regulations to apply to the application process, for application fees, for applicants authorising costs assessors accessing documents, for a statement from the applicant that there is no reasonable prospect of settlement by mediate, for the waiving, postponement or refunding of the application fee by the assessor.</p> <p><i>This level of detail not required under LPA 2003.</i></p>
3.4.51	NC	<p><b>Legal costs subject to a consumer dispute are not assessable</b></p> <p><i>WA does not use this concept of "consumer disputes".</i></p>

Clause #	Status	Clause and comment
3.6.4	NC	<p><b>Application of this Part</b> Provides for the application of Part 3.6 [Fidelity cover] to barristers.</p> <p><i>Not relevant to WA where there is no distinction made between barristers and solicitors.</i></p>
4.1.2	NC	<p><b>Definitions</b> Defines “complaint”, “conduct” and “official complaint”.</p> <p><i>“Complaint” and “conduct” are defined in clause 3. “Official complaint” [ie a complaint lodged by an appropriate authority] not relevant because WA does not differentiate between complaints on the basis of who has lodged them.</i></p>
4.5.2	NC	<p><b>Definition</b> Defines “consumer dispute” in Option 2 for the mediation of complaints.</p> <p><i>WA does not use this concept of “consumer disputes” and has not followed this option.</i></p>
4.5.3	NC	<p><b>Mediation of complaint involving consumer dispute solely</b> Included in Option 2 for the mediation of complaints.</p> <p><i>WA does not use this concept of “consumer disputes” and has not followed this option.</i></p>
4.5.4	NC	<p><b>Mediation of hybrid complaints</b> Included in Option 2 for the mediation of complaints.</p> <p><i>WA does not use this concept of “consumer disputes” and has not followed this option.</i></p>
4.5.5	NC	<p><b>Nature of mediation</b> Included in Option 2 for the mediation of complaints.</p> <p><i>WA does not use this concept of “consumer disputes” and has not followed this option</i></p>
4.7.5	NC	<p><b>Reasons to be provided to complainant and practitioner</b> Provides that the complainant and respondent are entitled to receive a statement of reasons from the appropriate authority if a complaint is dismissed, if it is referred to the SAT and, if referred, if any aspect of the original complaint has been omitted from the information provided to SAT.</p> <p><i>The requirement to provide reasons for dismissal are contained in clause 432(2)(a) of the LP Bill 07. The Legal Practitioners Complaints Committee, in its submission of 14 March 2007, requested that the requirement to give reasons when referring a matter to SAT be deleted as it would be inappropriate to give reasons for proceeding with a prosecution and that in due course SAT would reach a decision and give reasons for this.</i></p>
4.9.2	NC	<p><b>Hearings</b> Provides for the Disciplinary Tribunal having to conduct a hearing into each allegation laid before it.</p> <p><i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i></p>
4.9.3	NC	<p><b>Joinder</b> Provides for matters before the Disciplinary Tribunal being joined.</p> <p><i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i></p>
4.9.4	NC	<p><b>Variation of information</b> Refers to procedures before the Disciplinary Tribunal</p> <p><i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i></p>

Clause #	Status	Clause and comment
4.9.5	NC	<b>Nature of allegations</b> Refers to procedures before the Disciplinary Tribunal  <i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i>
4.9.6	NC	<b>Substitution of informant</b> Refers to proceedings before the Disciplinary Tribunal.  <i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i>
4.9.7	NC	<b>Rules of evidence</b> Refers to proceedings before the Disciplinary Tribunal.  <i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i>
4.9.10	NC	<b>Power to disregard procedural lapses</b> Refers to proceedings before the Disciplinary Tribunal.  <i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i>
4.9.11	NC	<b>Costs</b> Refers to proceedings before the Disciplinary Tribunal.  <i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i>
4.9.15	NC	<b>Notification of result of proceedings before Disciplinary Tribunal</b> Refers to proceedings before the Disciplinary Tribunal.  <i>This is not appropriate for this Bill, as the SAT and its procedures are governed by its own Act.</i>
4.13.2	NC	<b>Information about complaints procedure</b> Provides that the appropriate authority must produce information about the making of complaints and the procedure for dealing with complaints; must ensure that the information is available on request; and provide assistance to members of the public in making complaints.  <i>Information about the Legal Practitioners Complaints Committee and the complaints procedures are already contained on the website of the Legal Practice Board. A policy decision was taken in December 2006 that, therefore, this clause was superfluous.</i>
4.13.4	NC	<b>Performance criteria</b> Provides that the appropriate authority is to develop and report on performance criteria relating to the handling of complaints.  <i>Clause 571 sets out detailed annual reporting requirements for the Legal Practitioners Complaints Committee. These go beyond the requirements specified in National Model Bill clause 4.13.5 and would appear to meet the intent of 4.13.4.</i>

Clause #	Status	Clause and comment
4.13.7	NC	<p><b>Non-compellability of certain witnesses</b> Provides that a person who is protected from liability is not compellable in any legal proceedings before the Disciplinary Tribunal to give evidence or produce documents in respect of any matter in which the person was involved in the course of administering the complaints and discipline provisions.</p> <p><i>LPCC had originally requested this provision on 8 March 2006, but in its more recent submission on the draft Bill did not reiterate this request. After careful consideration of the merits of such a provision, it was ultimately determined that this provision was not necessary especially in light of its application to protected persons who by definition are protected from liability.</i></p>
5.5.14	NC	<p><b>Receiver may recover money stolen or embezzled</b> Provides that if money is stolen or embezzled from a law practice for which a receiver has been appointed, the receiver is taken to be the person from whom the money was stolen or embezzled.</p> <p><i>This clause seems superfluous given the breadth of clause 5.5.15 which provides for receivers being able to recover regulated property removed from a practice in breach of trust, improperly or unlawfully.</i></p>
6.1.1	NC	<p><b>Purpose of Chapter</b> Provides that the purpose of Chapter 6 is to provide powers in relation to trust account investigations, trust account examinations, complaint investigations and ILP compliance audits.</p> <p><i>Clause 6.2.1 (clause 518 in LP Bill 07) clearly applies this Part to these types of investigations etc and it seems unnecessary to have the same list simply replicated in a purposes clause.</i></p>
6.4.6	NC	<p><b>Failure to comply with investigation</b> Provides that failure to comply with an investigator is capable of constituting UPC or PMC.</p> <p><i>This clause largely duplicates 6.5.1 (clause 531 in LP Bill 2007) and 6.5.2 (clause 532). These other clauses provide that a person must not obstruct (ie hinder, delay, resist or attempt to obstruct) an investigator and that a person must not fail to comply with a requirement in relation to complaint investigations. In general terms, clause 404(a) provides that conduct consisting of a contravention of the Act is capable of constituting UPC or MPC. Clause 6.5.1 seems to be superfluous.</i></p>