

Update on the Legal Profession Uniform Law Scheme

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There have been two recent developments in relation to Western Australia joining the Legal Profession Uniform Law Scheme. The first is that WA has finalised negotiations with the States of NSW and Victoria for the terms of an Intergovernmental Agreement or IGA. WA and NSW have now signed it. It is anticipated that Victoria will do so shortly. The IGA implements a set of principles which were agreed between the three jurisdictions late last year. The second development is that approval has been given by the government for drafting the Legal Profession Uniform Application Bill (WA), to replace the existing *Legal Profession Act 2008 (WA)*.

The IGA provides for an expected timeframe for the implementation of its terms by 30 June 2020. If implementation has not occurred by 30 June 2021, or such other time as has been agreed between the three jurisdictions, the previous bilateral IGA which existed between New South Wales and Victoria revives. Realistically, the WA government anticipates that the Legal Profession Uniform Application Bill will be introduced into Parliament in the second half of 2019, and should be passed by the end of this year. There will then be a need to work out transitional arrangements, and make preparations for the implementation of the Scheme. It is presently anticipated that it will come into effect on 1 July 2020.

There are several important institutions within the framework of the Scheme. The first is the Standing Committee of the Attorneys-General of each jurisdiction. The Standing Committee has important functions under the IGA and under the Uniform Law. The second important institution is the Legal Services Council, which is constituted under the

Uniform Law. It makes Uniform Rules and monitors their implementation to ensure consistency across participating States. The third important institution is the Legal Services Commissioner, who is responsible for the operation of the Legal Services Commission. The Commissioner has the objectives of promoting compliance with the requirements of the Uniform Law and the Uniform Rules, ensuring the consistent and effective implementation of the Uniform Law and the Uniform Rules, and raising awareness of the Scheme.

There are also several important instruments that should be mentioned. The first is the Uniform Law, which provides for the framework of the Scheme. There are also Uniform Rules and Uniform Regulations which are made pursuant to the Uniform Law. The Uniform Rules underpin the operational detail of the Uniform Law. They include the General Rules, which are about such matters as practising certificates and trust monies. They also include the Admission Rules, concerning the qualifications for admission to the legal profession and the Conduct Rules, which set out ethical conduct rules for practitioners.

One of the important features of the IGA is that it provides that the Uniform Law, the Uniform Regulations and the Uniform Rules cannot be amended without the unanimous agreement of the Standing Committee. This is important, because it prevents the whole framework of regulation from being altered without the consent of the Attorney-General of WA. It is a significant advantage of WA being an early participant in the Uniform Scheme.

Another important feature of the IGA is that at least one member of the seven-member Legal Services Council has to be from WA. As well, the appointment of a Legal Services Commissioner has to be with the unanimous approval of the Standing Committee.

The funding of the Scheme is also subject to the control of the Standing

Committee. That is because the triennial operating budget of the Legal Services Council has to be unanimously approved by the Standing Committee. The obligation of parties to the Scheme to make a funding contribution is in proportion to the total number of legal practitioners within the Participating Jurisdiction. The obligation to make such contribution only arises at the time when the Uniform Law is implemented in a jurisdiction.

The IGA provides that the role and responsibilities of the Standing Committee is to develop and ensure consistent policy for the regulation of the legal profession and perform the functions allocated to it under the Uniform Law. It is agreed that the Standing Committee will not intervene in the daily operations of the Legal Services Council, the Legal Services Commissioner or a designated local regulatory authority. The designated local regulatory authority is responsible for the determination of applications for admission to the legal profession in a jurisdiction, the renewal of practising certificates, and individual complaints and disciplinary matters. In WA, the designated local regulatory authority will be the Legal Practice Board, and it will delegate some of its regulatory functions to the Legal Profession Complaints Committee.

The progress which has been made in moving WA towards joining the National Uniform Legal Profession is substantial. It will provide uniformity of access to the market for legal services, and ought to benefit our local legal profession while at the same time retaining many of the existing features of our present method of regulating legal practitioners. It is anticipated that a steering committee will be set up to liaise between practitioners, the Law Society, the Legal Practice Board and the government to ensure a smooth transition for WA in joining the Scheme.