



Australian Government
Attorney-General's Department

Secretary

09/12345-02

11 December 2009

Professor the Hon Michael Lavarch
Executive Dean
Law Faculty
Queensland University of Technology
GPO Box 2434
BRISBANE QLD 4001

Dear Professor Lavarch

Michael

National Legal Profession Reform Project

I refer to Louise Glanville's discussion with the Consultative Group at its meeting of 1 December and your letter of 9 December 2009.

Louise Glanville mentioned to the Taskforce after her attendance at that meeting that the Consultative Group would like some details about the reforms relating to admissions and some information about the timing of the project. I also set out the Taskforce proposals for professional associations and a co-regulatory system of regulation of the profession.

Admissions

The Taskforce has recently considered admission criteria and processes. We are proposing to uphold the role of the Supreme Courts as guardians of the profession and utilise the valuable work undertaken by the Law Admissions Consultative Committee (LACC) while providing for the appropriate recognition of the qualifications, training and experience of applicants from foreign jurisdictions. The Taskforce is aiming to simplify processes generally and is proposing that:

- the National Legal Services Board approve providers of academic and practical legal training that satisfy the requirements in the National Rules;
- the Board assess applicants (including foreign qualified applicants) against national admission criteria (National Rules) and issue compliance certificates;
- the LACC Uniform Admission Rules form the basis of the initial National Rules on admission of Australian-qualified applicants;
- the Supreme Courts admits, or may refuse admission to, candidates with a compliance certificate;

- a Supreme Court may, on recommendation from the Board or its delegate, admit a foreign-qualified lawyer for a specified period of time or to practise in a specified area of law (such conditions on admission would also become conditions on the practising certificates of those lawyers);
- the Board may enter into arrangements with foreign admitting authorities providing for the mutual recognition for admission purposes of tertiary academic courses and practical legal training programs.

The Taskforce is also considering whether the assessment of foreign-qualified applicants for admission should be centralised in one jurisdiction.

Role of professional associations

The Taskforce has also recently given close consideration to the role of the professional associations in the regulation of the legal profession.

The Taskforce recognises the invaluable contribution of the profession and its professional associations – a contribution that is often voluntary – and the wealth of expertise that lies within the profession. We also acknowledge the importance of the independence of the profession to the administration of justice. The Taskforce is therefore keen to preserve a co-regulatory model of legal profession regulation in which the profession and its representative organisations continue to play an important role in regulation.

On the other hand, the Taskforce also recognises consumer expectations and general public and government expectations of transparency, accountability and consumer protection. The Taskforce has given particular consideration to those areas of regulation that give rise to an actual or perceived conflict of interests and therefore require a level of independence *from* the profession, notwithstanding the established independence *of* the profession. Such areas include the handling of complaints and the determination of claims against a fidelity fund.

The Taskforce therefore proposes that the role of the profession and its professional associations include:

- membership on the National Legal Services Board through the Law Council of Australia;
- a fundamental role in the development of National Rules on professional conduct, legal practice and continuing professional development;
- continued involvement in the development of all other areas of regulation through Standards Advisory Committees.
- a continued role in administering certain areas of legal profession regulation under delegation from the Board or sub-delegation from the Board's State or Territory delegates – this would include administering practising certificates, trust account inspections and investigations, and managing fidelity funds;
- working with the National Legal Services Ombudsman and/or its delegates in the States and Territories to investigate alleged contraventions of the legislation or National Rules; and
- a continuing professional association role in maintaining and raising professional standards through education and guidance for their members.

The profession and its professional associations would also continue to make a valuable contribution to law reform, to represent the profession in various contexts and to serve the community through relationships, products, information and services that engage, inform and educate consumers and other stakeholders about the profession, the legal system and their rights as consumers.

What the Taskforce has done so far

In addition to the above and the papers that have been forwarded to the Consultative Group, the Taskforce has also considered offences and penalties, investigations, fidelity funds and given further consideration to the role of the Board and Ombudsman. The Taskforce has also issued drafting instructions on various matters to the drafter of the proposed National Law.

Timing of the project

The Council of Australian Governments has asked that the Taskforce provide it with a draft of the proposed National Law and a report by 30 April. The Taskforce will also be providing COAG with a draft of some or all of the national rules, a regulation impact statement for the Bill and the reform, an inter-governmental agreement to support the Bill and an explanatory memorandum for the Bill. To meet this tight deadline, the Taskforce intends to do the following.

The Taskforce will give the Consultative Group a paper on fidelity funds this week and is not expecting to give the Consultative Group any further papers as we move to the Bill stage of the project.

The Taskforce is now concentrating on preparing a draft Bill and intends to have the draft Bill to the Consultative Group and out for public consultation around the first week in February. The Bill will be available for consultation for one month.

The Taskforce also anticipates having at least some draft national rules to the Consultative Group and out for public consultation in February or March for a short consultation period.

Thank you for the Consultative Group's consideration of the issues to date. The Taskforce has found them useful. I look forward to receiving comments on the Bill in due course whether from the Group as a whole, or from individual Consultative Group members as they think appropriate.

The action officer for this matter is Marjorie Todd who can be contacted on 02 6141 4321.

Yours/sincerely



Roger Wilkins AO