

**NATIONAL LEGAL PROFESSION REFORM  
CONSULTATIVE GROUP**

**BACKGROUND PAPER**

**4 August 2009**

## Introduction

The Council of Australian Governments (COAG) has had an ongoing commitment to microeconomic and regulatory reform throughout Australia. On 5 February 2009, COAG reaffirmed that commitment, recognising that better regulation enhances Australia's productivity and international competitiveness, which deepens the supply potential of the economy, drives its ability to adapt and raises the potential growth rate of the economy. That day, COAG also recognised that, despite recent valuable reform, there remains considerable scope for further microeconomic reform in the following areas:

- major city strategic plans that incorporate clear provisions for long-term infrastructure needs;
- planning reforms for individual infrastructure projects;
- regulation of export-related infrastructure; and
- reform of legal profession regulation.

On 30 April 2009, COAG agreed that:

- Draft legislation providing uniform laws regulating the legal profession across Australia be prepared for consideration by COAG within 12 months.
- A specialist taskforce be appointed by the Attorney-General to make recommendations and prepare the draft legislation.
- A consultative group be appointed by the Attorney-General to advise and assist the Taskforce.

The following is a summary of the structures established to implement the COAG decision.

## The Taskforce

Following the April COAG meeting, the Prime Minister and the Commonwealth Attorney-General announced the membership of the Taskforce (see media release at **Attachment A**):

- Roger Wilkins AO, Secretary, Commonwealth Attorney-General's Department
- Bill Grant, Secretary-General, Law Council of Australia
- Laurie Glanfield AM, Director General, NSW Attorney General's Department
- Louise Glanville, Executive Director, Victorian Department of Justice, and
- Stephen Goggs, Deputy Chief Executive, ACT Department of Justice and Community Safety

The Taskforce is supported by an officer level Working Group and will report to COAG through the Business Regulation and Competition Working Group. It will also consult the Standing Committee of Attorneys-General (SCAG).

## The Consultative Group

The Attorney-General has established the Consultative Group to advise the Taskforce in its work. Members of the Group represent a wide range of expertise – from legal regulators, the courts, consumers, the legal profession and legal educators.

**Chair:** Professor the Hon Michael Lavarch, Executive Dean, Queensland University of Technology, former Commonwealth Attorney-General, and former Secretary-General of the Law Council of Australia.

### Members:

Mr Tony Abbott, Chairman at Piper Alderman, past President of the Law Council of Australia.

Ms Carolyn Bond, Co-Chief Executive Officer of the Consumer Action Law Centre Victoria, and member of the Board of the Legal Service Board of Victoria.

Ms Barbara Bradshaw, Chief Executive Officer, Northern Territory Law Society.

Mr John Briton, Legal Services Commissioner of Queensland and former Queensland Anti Discrimination Commissioner and State Director of the Human Rights and Equal Opportunity Commission.

Mr Joseph Catanzariti, President, Law Society of New South Wales.

Mr Robert Cornall AO, former Secretary of the Commonwealth Attorney-General's Department, has been a Managing Director of Victoria Legal Aid, and Executive Director and Secretary of the Law Institute of Victoria.

Ms Ro Coroneos, President of the NSW Division and a Director of the Australian Corporate Lawyers Association.

Mr Harold Cottee, General Manager, Professional Standards, Law Institute of Victoria.

Mr Andrew Grech, Managing Director, Slater & Gordon, Melbourne.

Mr Martyn Hagan, Executive Director, Law Society of Tasmania.

Ms Noela L'Estrange, Chief Executive Officer, Queensland Law Society and former Director of Legal Practice Support, Australian Government Solicitor.

Mr Robert Milliner, Chief Executive Partner, Mallesons Stephen Jaques, Chairman of the Large Law Firm Group Limited and member of the Board of the Business Council of Australia.

Mr Steven Penglis, member of the Legal Practice Board of Western Australia.

Mr Andrew Phelan, Chief Executive and Principal Registrar, High Court of Australia.

Mr Philip Selth OAM, Executive Director, New South Wales Bar Association.

Professor Peta Spender, Presidential Member ACT Civil and Administrative Tribunal, and Professor of Law, Australian National University.

Mr Dudley Stow, President, The Law Society of Western Australia.

The Hon Justice Murray Tobias AM RFD, Supreme Court of New South Wales.

### **The Working Group**

An officer level Working Group has been established to support the Taskforce and assist the Consultative Group with its processes. The Group consists of officers from:

- the Law Council
- the Commonwealth
- Victoria, and
- New South Wales.

### **Roles of the Taskforce, Consultative Group and Working Group**

#### ***Taskforce***

- The Taskforce will determine the policy direction of the project and its parameters. The Taskforce will also determine the detail of the draft legislation.
- The Taskforce will ultimately be responsible for making recommendations to COAG about the most effective means of achieving uniform national legislation and regulation.
- The Taskforce will receive stakeholder feedback through the Consultative Group.
- The Taskforce will agree on any recommendations to be taken forward. Any divergence of opinion in significant areas will be noted in reporting.
- Members participate in the Taskforce in their individual capacities on a voluntary basis.

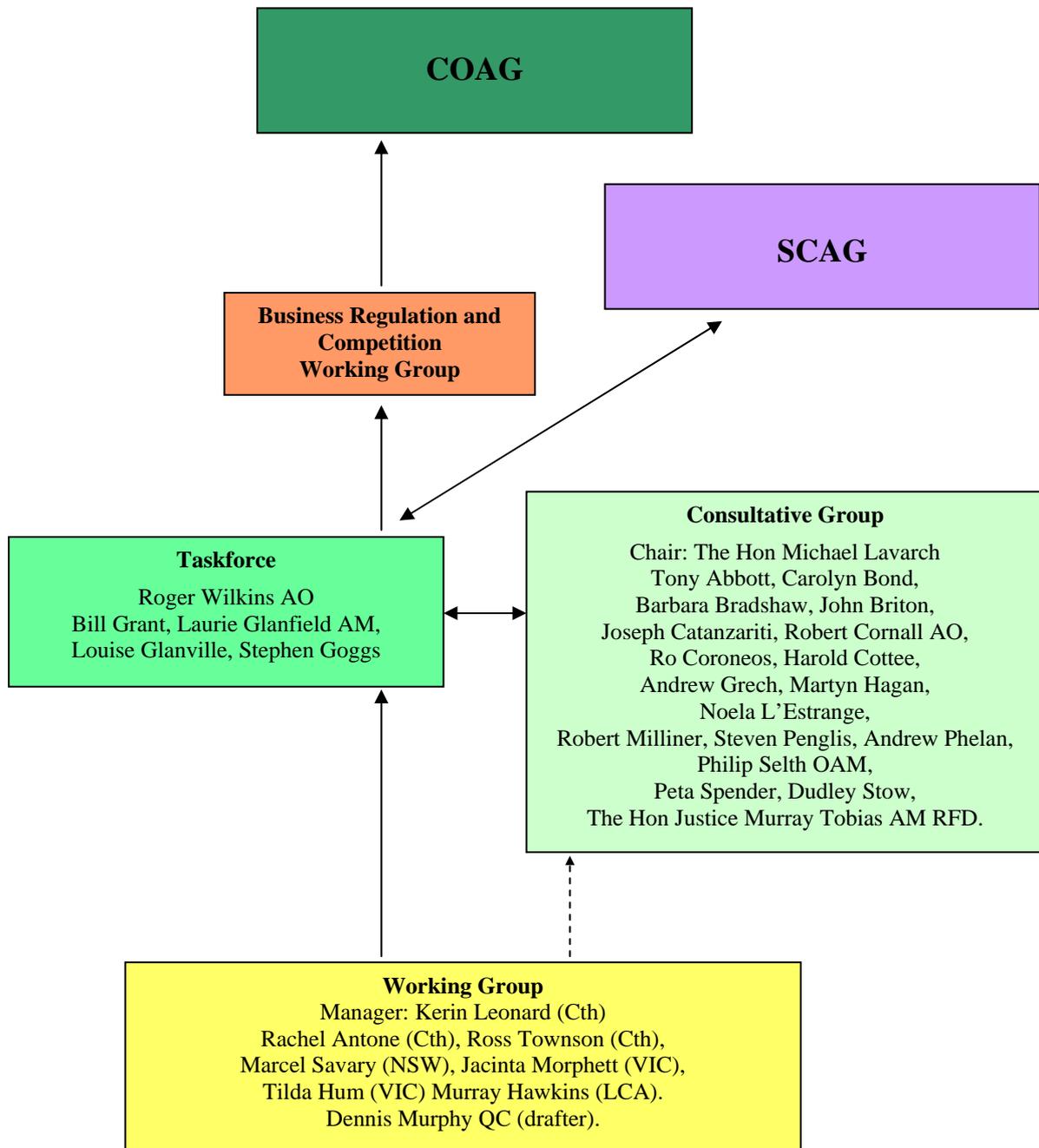
### *Consultative Group*

- The Consultative Group is a reflective rather than a representative body—members participate in the Group in their individual capacities on a voluntary basis. The Group represents a wealth of experience across a range of key areas including regulators, the courts, consumers, the legal profession and legal educators.
- The Group will be chaired by Professor the Hon Michael Lavarch.
- The Consultative Group, through its Chair, will advise and assist the Taskforce in developing its recommendations. When advising the Taskforce, the Group is to endeavour to present consensus positions; however, in those instances where a single view is unattainable, differing conclusions will be communicated to the Taskforce.
- The Consultative Group is encouraged to consult outside of the Group in a structured way and will act as a conduit for information/views.

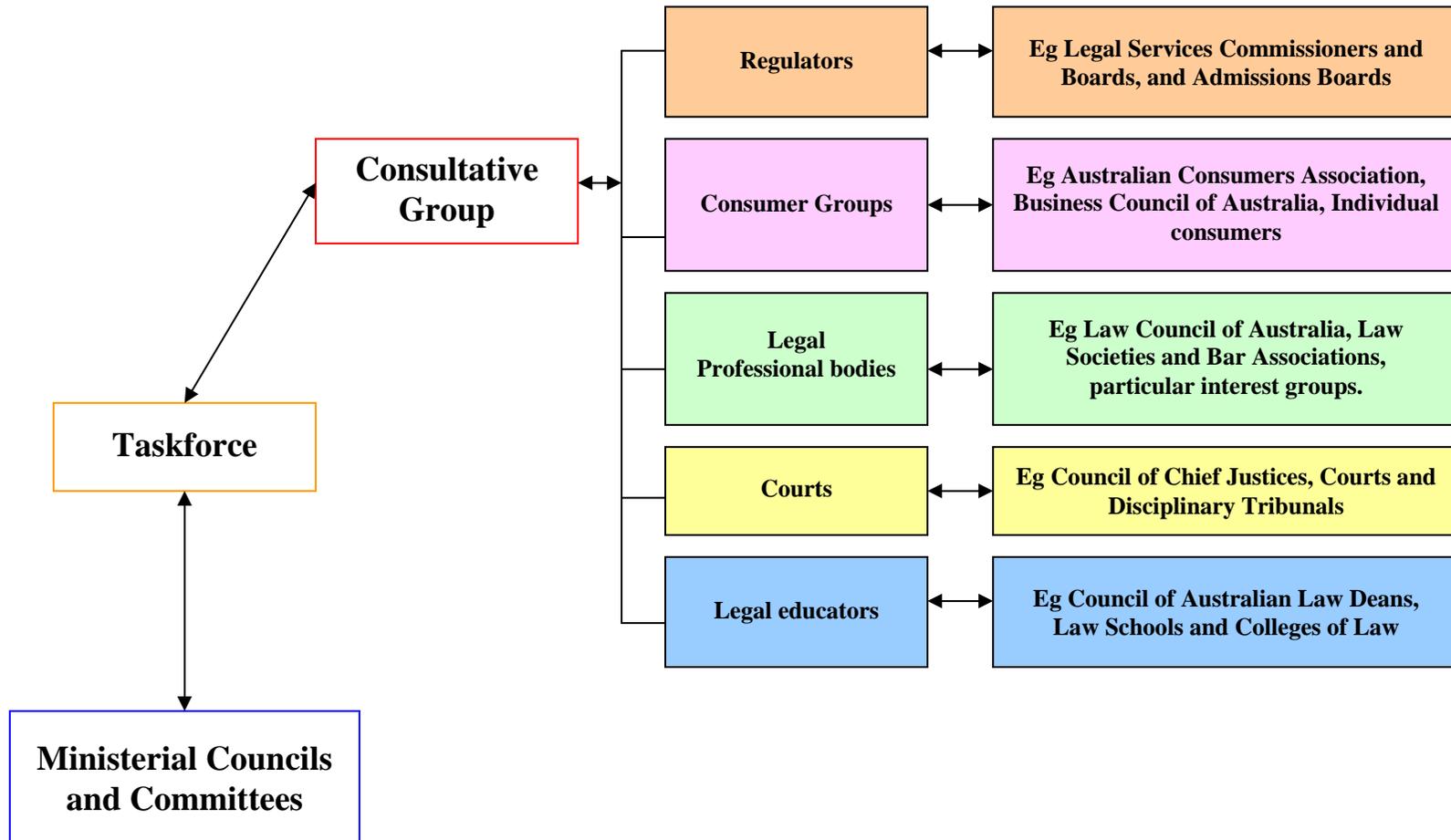
### *Working Group*

- The Working Group provides policy, technical, administrative design advice and secretariat support to the Taskforce, including the preparation of proposed recommendations and draft legislation.
- The Working Group will assist the Consultative Group where required, eg in the provision of secretariat support.
- The Working Group is responsible for drafting papers for consideration by the Taskforce and/or the Consultative Group, and managing reporting requirements.
- The Working Group's manager—an officer of the Commonwealth Attorney-General's Department—is responsible for the day-to-day management of the project.

## Governance and Relationships



## Consultation Flow



## **Wider consultation**

There are a range of perspectives to be considered and interests to be taken into account by the Taskforce in developing draft legislation for COAG. Broadly speaking, there are five groups that are likely to have a significant interest in the recommendations resulting from this work: (a) governments, including ministers, departments, and agencies focused on the delivery and/or regulation of legal services; (b) the Courts; (c) consumers of legal services; (d) the legal profession, including peak bodies and associations; and (e) legal education institutions.

Consultation will be primarily managed through:

- composition and operation of the Consultative Group, including papers, meetings, and regular contact with ‘constituencies’ so that a broad range of views can be taken into account by the Consultative Group
- public submissions
- regular reports to the Standing Committee of Attorneys-General
- members of the Taskforce contributing to relevant journals and newsletters
- opportunities for speeches/meetings
- encouraging direct engagement between members of the legal profession, consumer groups and Australian governments who will ultimately have to consider the draft legislation, and
- media releases at appropriate points, and
- a website.

The Taskforce will regularly report to COAG (through its Business Regulation and Competition Working Group) on progress with the project, including stakeholder feedback received through the Consultative Group.

## **Consultative Group processes**

The Chair of the Consultative Group will establish the working rules for the Consultative Group, including methods of communication. It is proposed that discussions amongst the Consultative Group primarily take place via telephone.

The Consultative Group will comment on Taskforce proposals and identify issues for further discussion, but will not be responsible for drafting legislation or making recommendations. To assist in this process, the Working Group will prepare papers for consideration by the Consultative Group. Papers released to the Consultative Group will be cleared by the Taskforce.

While the Consultative Group is a reflective and not a representative body, papers being considered by the Group may be circulated more broadly for the purposes of consultation. It is also proposed that these papers be made public on the website shortly after circulation to the Consultative Group.

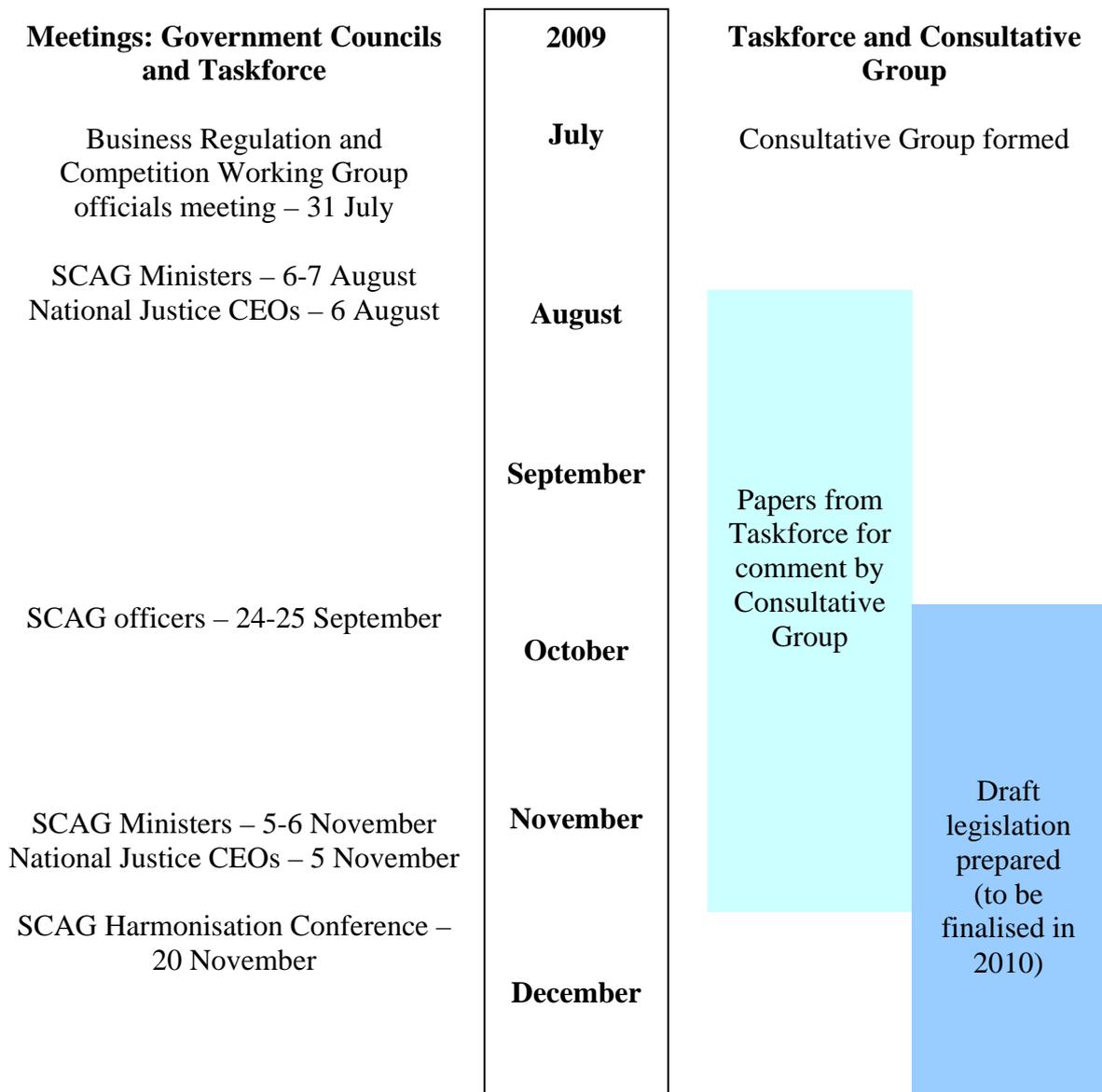
## The Task at hand

### *Statement of Intent*

The Taskforce aims to produce draft legislation and make recommendations on regulatory structures for the uniform regulation of the legal profession across Australia by 30 April 2010.

The work will aim to deliver: (a) a national legal profession and a national legal services market through simplified uniform legislation and regulatory standards; (b) clear and accessible consumer protection, so that consumers have the same rights and remedies available to them regardless of where they live; and (c) a system of regulation that is efficient and effective.

### *Indicative timeline for 2009*



**Taskforce to Report to COAG with recommendations and draft legislation by 30 April 2010.**

## Background

### Snapshot of the profession today

According to the Australian Bureau of Statistics, Australian legal services contributed \$11 billion to the Australian economy and generated \$18 billion in income in 2007/08.<sup>1</sup>

In total, there were 15,326 legal services businesses and organisations operating in Australia at the end of June 2008. Of these, barristers accounted for one quarter (25%), while 73% were other legal services businesses, including solicitor, patent attorney, notary, conveyancing and title searching businesses. The remaining businesses and organisations comprised of legal aid commissions, community legal centres, Aboriginal legal services, government solicitors and public prosecutors.

Legal services employed 99,696 persons in Australia. Of these employees:

- 5,154 worked in barrister businesses
- 84,921 worked in other legal services businesses, and
- 9,622 were employed in government solicitor or public prosecutors offices, legal aid commissions, community legal centres and Aboriginal legal services.

In addition to paid employees there were 4,474 volunteers in community legal centres and Aboriginal legal services organisations throughout June 2008.

A summary of the number of legal service providers, their income and their expenses for 2008-2009 is provided in the tables below.

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<sup>1</sup> ABS Media Release *Legal Services Contribute \$11 billion to the Australian Economy*, 24 June 2009.

ABS Statistics—Barristers 2008-2009

**States and territories,  
Barristers**

		New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Northern Territory	Australian Capital Territory	Australia
Businesses at end June	no.	1,540	1,347	570	149	144	20	35	62	3,869
Employment at end June										
Practising barristers	no.	1,540	1,347	570		144	20			3,869
Other	no.	511	355	316		57	11			1,285
<i>Total</i>	no.	<i>2,051</i>	<i>1,702</i>	<i>886</i>		<i>201</i>	<i>32</i>			<i>5,154</i>
<b>Income</b>										
Fee income from the provision of legal services	\$m	615.9	428.6	209.9	40.3	60.4	6.1	8.0	12.3	1,381.6
Other	\$m	5.0	7.5	1.6	1.4	0.5	0.3	0.1	0.3	16.7
<i>Total</i>	\$m	<i>620.9</i>	<i>436.1</i>	<i>211.5</i>	<i>41.8</i>	<i>60.8</i>	<i>6.4</i>	<i>8.1</i>	<i>12.6</i>	<i>1,398.3</i>
<b>Expenses</b>										
Wages and salaries	\$m	17.7	8.2	7.9	3.7	1.8	0.2	0.6	0.4	40.5
Payments for legal and legal support services	\$m	51.2	22.8	17.6	4.0	1.7	0.2	0.5	1.9	99.8
Other	\$m	120.1	73.7	31.6	6.4	11.1	1.3	1.4	2.1	247.7
<i>Total</i>	\$m	<i>189.0</i>	<i>104.7</i>	<i>57.0</i>	<i>14.1</i>	<i>14.6</i>	<i>1.8</i>	<i>2.5</i>	<i>4.4</i>	<i>388.1</i>
Operating profit before tax	\$m	431.9	331.4	154.5	27.7	46.3	4.7	5.6	8.3	1,010.2
Operating profit margin	%	70.0	76.9	73.1	67.8	76.2	75.1	67.5	67.1	72.8
Operating profit per barrister	\$'000	280.4	246.0	271.1	185.8	320.5	227.1	159.9	132.1	261.1

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**Note:** The relative standard error of the above data differs, which can affect the reliability of this data. Please refer to the ABS report 8667.0 - *Legal Services, Australia, 2007-08* for more details. Available at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/8667.02007-08?OpenDocument>.  
ABS Statistics- Other Legal Services 2008-2009

## States and territories, Other legal services

		New South Wales	Victoria	Queensland	South Australia	Western Australia	Tasmania	Northern Territory	Australian Capital Territory	Australia
Businesses at end June	no.	4,704	2,650	1,910	766	930	149	66	183	11,244
Employment at end June										
Practising solicitors and barristers	no.	14,551	8,677	5,317	2,164	2,611	412	125	729	34,587
Other	no.	16,998	14,138	11,229	2,735	3,536	637	199	862	50,334
<i>Total</i>	no.	<i>31,550</i>	<i>22,815</i>	<i>16,546</i>	<i>4,899</i>	<i>6,147</i>	<i>1,049</i>	<i>324</i>	<i>1,591</i>	<i>84,921</i>
<b>Income</b>										
Fee income from the provision of legal and legal support services	\$m	6,240.9	3,689.3	2,427.9	824.5	1,081.4	101.6	55.8	271.8	14,693.2
Other	\$m	94.3	181.1	166.3	14.5	55.0	1.3	1.7	0.7	514.9
<i>Total</i>	\$m	<i>6,335.2</i>	<i>3,870.4</i>	<i>2,594.1</i>	<i>839.0</i>	<i>1,136.4</i>	<i>102.9</i>	<i>57.5</i>	<i>272.5</i>	<i>15,208.1</i>
<b>Expenses</b>										
Wages and salaries	\$m	1,569.5	1,075.8	676.0	194.8	280.7	31.4	19.5	71.3	3,919.0
Other	\$m	2,847.0	1,642.0	1,237.6	363.0	438.2	41.7	24.8	113.7	6,708.0
<i>Total</i>	\$m	<i>4,416.6</i>	<i>2,717.8</i>	<i>1,913.6</i>	<i>557.8</i>	<i>718.8</i>	<i>73.1</i>	<i>44.3</i>	<i>185.0</i>	<i>10,627.1</i>

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## Legal Profession Regulation: The recent history and current state of affairs

Lawyers are regulated as a profession, rather than an occupation, due to the distinctive role they play in upholding the law and facilitating access to justice. As the Hon JJ Spigelman CJ said at his swearing in ceremony in May 1998, '[t]he independence and integrity of the legal profession, with professional standards and professional means of enforcement, is of institutional significance in our society. It is an essential adjunct to the independence to the judiciary.'

The Courts maintain an oversight role over the legal profession, particularly in the area of admission to practice and professional standards of conduct. In undertaking this role, the Courts are assisted by a range of structures in each jurisdiction, with some regulatory responsibility resting in professional associations and other responsibilities placed in statutory regulators. Self-regulation of the legal profession has in all jurisdictions moved to a model of co-regulation, but the nature and balance of responsibilities between structures varies from jurisdiction to jurisdiction.

The regulation of the legal profession in Australia is presently governed by State and Territory law. The laws govern: entry into the legal profession; practising entitlements and conditions; the form and manner in which legal practise is conducted; complaints-handling; and consumer protections through discipline and remedies. An overview of the legal practise system and regulatory control points is at **Attachment B**.

Although all States and Territories apart from South Australia have introduced harmonised legislation, differences between jurisdictions continue to exist. A summary of the current system of legal profession regulation in each jurisdiction is at **Attachment C**.

The National Competition Policy reforms of the 1990s and the advent of mutual recognition of entitlement to practise interstate have facilitated cross-jurisdictional practice of law. Since 2004, all jurisdictions have moved to introduce harmonised regulatory standards and practices through the introduction of legislation based on the Standing Committee of Attorneys-Generals' National Legal Profession Model Bill. All State and Territories other than South Australia have since enacted legislation based on the Model Bill.

The national model laws institute worthwhile and significant reforms, which have come closer to creating a national legal services market than ever before. However, variations in the implementation of the Model Bill have resulted in: (1) impediments to seamless national practise; (2) unnecessary compliance costs and burdens; and (3) varying levels of consumer protection.

On 5 February 2009, COAG agreed that legal profession regulation would be added to its microeconomic and regulatory reform agenda. This decision recognised that legal services are a critical part of Australia's economy and require clear and efficient national regulation. It also recognised that existing regulation can be simplified as the current number and range of regulators imposes unnecessary costs and red tape for

lawyers and consumers. Variation in legislative standards and processes across Australia also impacts upon the international competitiveness of Australian law firms.

While previous reform work has advanced the situation, there remains scope to build upon these efforts by developing uniform and simplified approaches in areas, such as:

- definitions, meaning of certain terms and key concepts
- admission to the legal profession
- different classes of practising certificate and conditions on legal practise
- continuing legal education
- regulation and oversight of business structures for law practices
- trust money and trust accounts
- costs disclosure, billing and costs assessment standards and practices
- professional indemnity insurance standards
- fidelity funds claims management
- complaints handling mechanisms and disciplinary structures and procedures, and
- penalties and offences.

In addition to achieving uniformity, the Taskforce has agreed that this reform process provides an opportunity to enhance the clarity and accessibility of consumer protection. The Taskforce has also agreed that a new system of regulation should be flexible enough to address legal professionals practising in different environments, such as those in urban, rural and regional areas, and to consider the particular needs of different types of consumers, from individuals to large corporate clients.

### **Why regulate the legal profession?**

The primary purpose of regulation is to abate or control risks. In relation to the legal profession, relevant risks include:

- that those not appropriately qualified and authorised to do so provide legal services to Australian consumers, and
- that individuals, while being appropriately authorised to provide legal services, fail to meet standards consistent with the expectations of the Australian community when providing those legal services.

Regulation also exists to facilitate social and economic outcomes. In relation to the provision of legal services, regulatory outcomes include:

- promoting the efficient and effective administration of justice and maintaining public confidence in the justice system
- that consumers of legal services will be adequately protected and compensated when legal services provided to them fall short of standards for consumer protection, and

- that there will be healthy competition within the legal services market.

Regulation of the legal profession at the national level is being considered with three primary aims:

- to promote the interests of the administration of justice and to maintain public confidence in our legal system;
- to enhance the protection of consumers of the services of the legal profession and the public generally; and
- efficient and effective regulation on a national basis.

### ***1. Promote the interests of the administration of justice***

Lawyers are regulated because they are essential agents in the administration of justice—the linchpin of upholding the rule of law and in assisting consumers to maintain and protect their legal interests and rights.

To this end, regulation is aimed at:

- ensuring lawyers are competent and maintain high ethical standards;
- facilitating access to justice, both in terms of service to clients and use of the courts;
- ensuring lawyers maintain the integrity of their profession, and
- upholding the integrity of the justice system.

### ***2. Enhance consumer protection***

Lawyers are regulated to protect consumers. Individual consumers often require legal services at some of the most vulnerable times of their lives. There is information asymmetry between many lawyers and their clients, and much legal work appears intangible—this can make it difficult for clients to determine the cost implications of their decisions and to know whether a lawyer has done a good job. Recently, concerns have been raised in some jurisdictions about the reasonableness of legal costs and billing practices and clients’ rights following defalcation of trust monies resulting in the collapse of a law practice.

Regulation of lawyers for consumer protection purposes is aimed at:

- empowering consumers to make informed choices about the courses of action they pursue and the costs involved;
- assisting people to understand their legal rights and responsibilities by providing them with quality information;
- protecting consumers from poor quality or unethical legal advice or representation;
- improving access to justice;
- providing a clear, accessible and affordable complaints resolution scheme; and
- taking into account the different needs of individual and large corporate consumers.

### **3. *Efficient and effective regulation on a national basis***

Legal services are a significant contributor to Australia's domestic economy. It is essential therefore that the regulatory framework within which legal practitioners provide legal services continues to evolve in ways that support and foster a truly national legal services market. It is also important that the regulatory framework supports and promotes Australia's increasingly significant participation in the international legal services market.

Progress in recent years towards greater consistency and promotion of uniformity has not fully delivered on the efficiencies to which the Model Laws Project aspired and has not sufficiently impacted on the removal of regulatory barriers to the creation of truly seamless national legal services market.

Ultimately, legal profession regulation needs to ensure that legal practitioners can move freely between jurisdictions, and that law practices can operate on a truly national basis. This requires uniformity of approaches to both legislation and to way the full range of regulatory functions and activities are organised and discharged.

## Principles to guide regulatory reform

The general goals of regulatory reform in Australia will also influence choices about regulation of the legal profession. COAG has agreed that all Australian governments will ensure that regulatory processes in their jurisdictions are consistent with the *Principles of Best Practice Regulation (Attachment D)*.

In this instance, COAG has recognised the case for action and has taken the first step towards identifying the option that generates the greatest net benefit for the community; namely, uniformity across all Australian jurisdictions. A mechanism for effective consultation with key stakeholders at this point of the regulatory cycle has also been established: the Consultative Group. The remaining principles for best practice regulation will inform the development of the uniform legislation and recommendations that the Taskforce will produce.

In light of those best practice principles, and as a micro-economic reform initiative, the reform of legal profession regulation will aim to:

- produce regulation that is efficient and effective—legislation that is uniform in substance and form, transparent and proportionate
- direct regulation at those areas where it is needed
- reduce compliance burdens and reduced costs for Australian law practices
- ensure that consumers are only required to pay reasonable costs for legal services
- remove regulatory burdens to cross-jurisdictional work in Australia and in doing so, facilitate the ongoing development and operation of a seamless national legal profession and legal services market
- increase the competitiveness of Australian law practices and facilitate the international legal services market
- establish mechanisms for ensuring that regulation remains robust, relevant and effective over time—responsive to future challenges, and
- create certainty and confidence in regulatory machinery and the administrative policies and practices that put it into operation.

In developing uniform legislation, the Taskforce has also agreed that they should look at a system where:

- the fundamental principles underpinning the national regime will be clearly enunciated
- the draft legislation will take a simplified approach by eliminating excessively prescriptive procedure or process in legislation, and by adopting an approach that provides for setting national standards, policies and practices wherever possible and appropriate
- there should no longer be a distinction between core and non-core provisions as was adopted in the Model laws
- the distinction between uniform and non-uniform provisions, as used in the Model Bill, will no longer be relevant as a consequence of creating nationally uniform laws

- there should be a single set of definitions and the meaning of key terms and concepts, and
- there should be consistency of wording, style and numbering.

The new regulatory framework should result in an overall reduction in the cost of legal profession regulation. A regulation impact assessment will be carried out as part of this process to consider both longer-term outcomes and shorter-term transitional costs.

Joint Media Release

Prime Minister

Attorney-General

30 April 2009

# **NATIONAL LEGAL PROFESSION REFORM**

Today, the Council of Australian Governments (COAG) has agreed on a plan to achieve national regulation of the Australian legal profession.

COAG has agreed that:

- Draft legislation providing uniform laws regulating the legal profession across Australia be prepared for consideration by COAG within 12 months;
- A specialist Taskforce be appointed by the Attorney-General to make recommendations and prepare the draft legislation; and
- A Consultative Group be appointed by the Attorney-General to advise and assist the Taskforce.

The specialist taskforce will begin work immediately and will be supported by a dedicated Secretariat within the Attorney-General's Department.

The Taskforce will comprise the following members:

- Roger Wilkins AO - Secretary, Commonwealth Attorney-General's Department;
- Bill Grant - Secretary-General, Law Council of Australia;
- Laurie Glanfield AM - Director-General, NSW Attorney-General's Department; and
- Louise Glanville - Executive Director, Victorian Department of Justice.

The Commonwealth will also seek a further nomination to ensure that small jurisdictions are appropriately represented.

The Consultative Group will be chaired by the Hon Michael Lavarch, Professor of Law at Queensland University of Technology, and will include members from each State and Territory representing peak legal, business and consumer groups.

The Attorney-General will today write to the States and Territories as well as other interest groups inviting nominations for the Consultative Group.

This Consultative Group will play an important role in identifying issues, providing advice and developing recommendations on this important reform agenda.

The regulation of the legal profession in Australia remains overly complex and inconsistent, with up to 55 different regulators across the country.

As a result, different practices apply in different jurisdictions, including for example costs disclosure and billing, admissions and practicing certificates and complaints handling and professional discipline.

Australian lawyers and consumers no longer operate in just one State or Territory.

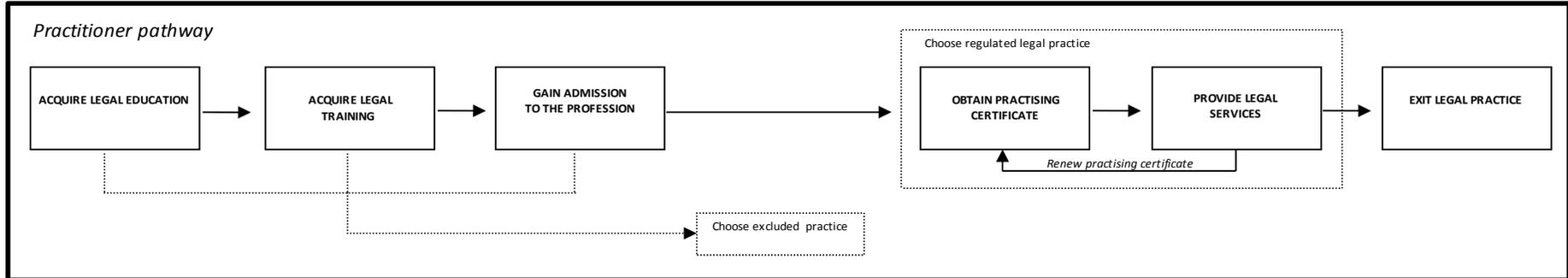
To deliver a seamless national economy we can no longer justify such disparate regulation for just one profession.

National regulation of the legal profession will benefit consumers, lawyers and firms alike:

- Consumers of legal services will benefit through increased competition, reduced compliance costs and billing arrangements that are simplified and more transparent;
- Lawyers will benefit by being able to easily operate across jurisdictions; and
- Legal firms will benefit by being more competitive in both the national and international arena.

The Commonwealth looks forward to working cooperatively with the States and Territories, and the legal profession on this important reform agenda.

**LEGAL PRACTICE SYSTEM**  
**System in focus: Regulated legal practice**



*Regulatory control points*

Academic Legal Education	Practical Legal Training	Admission	Excluded Practice	Practising Certificates	Provide Legal Services				
<ul style="list-style-type: none"> <li>Approved academic qualifications.</li> <li>Corresponding academic qualifications.</li> <li>Approved institutions.</li> <li>LACC Principles and Guidelines.</li> <li>Uniform Admission Rules</li> <li>Local Admission Rules.</li> </ul>	<ul style="list-style-type: none"> <li>Approved practical legal training requirements.</li> <li>Corresponding practical legal training requirements.</li> <li>Approved practical training providers or programs.</li> <li>LACC Principles and Guidelines.</li> <li>Uniform Admission Rules.</li> <li>Local Admission Rules.</li> </ul>	<ul style="list-style-type: none"> <li>Local Admission Rules and procedures.</li> <li>Compliance certificates.</li> <li>Supreme Court - orders for admission.</li> <li>Conditions.</li> <li>Roll of persons admitted.</li> <li>Information exchange.</li> </ul>	<ul style="list-style-type: none"> <li>Exclusions from general prohibition on practice when not entitled.</li> </ul>	<ul style="list-style-type: none"> <li>Form, timing and jurisdiction of applications.</li> <li>Grant/renew/refuse or amend/suspend/cancel a practising certificate.</li> <li>Categories, conditions and prohibitions.</li> <li>Suitability assessments and suitability reports.</li> <li>Show cause events.</li> <li>Information and document disclosure.</li> <li>Investigation powers.</li> <li>Information exchange</li> <li>Register of local practising certificate holders.</li> <li>Supreme Court - orders not to contravene Conditions.</li> <li>Interstate practitioners and Government lawyers.</li> <li>Continuing professional development.</li> </ul>	<table border="0"> <tr> <td> <p><b>Conduct of practice</b></p> <ul style="list-style-type: none"> <li>Practice structures.</li> <li>Legal Profession Rules.</li> <li>Trust money.</li> <li>Trust accounts.</li> <li>Costs disclosure.</li> <li>Costs agreements.</li> <li>Billing.</li> <li>Costs assessments.</li> <li>Professional indemnity insurance.</li> <li>Fidelity cover contributions and levies.</li> <li>Foreign lawyers</li> </ul> </td> <td> <p><b>External intervention</b></p> <ul style="list-style-type: none"> <li>ILP compliance audits.</li> <li>Trust account investigation.</li> <li>Trust account external examination.</li> <li>Trust account supervision.</li> <li>External management</li> <li>Receivers</li> <li>Information and document disclosure.</li> <li>Access to premises.</li> <li>Consumer remedies</li> </ul> </td> </tr> <tr> <td colspan="2"> <p><b>Complaints and discipline</b></p> <ul style="list-style-type: none"> <li>Lodgment and handling.</li> <li>Mediation.</li> <li>Investigation.</li> <li>Consumer remedies.</li> <li>Disciplinary Tribunal.</li> </ul> </td> </tr> </table>	<p><b>Conduct of practice</b></p> <ul style="list-style-type: none"> <li>Practice structures.</li> <li>Legal Profession Rules.</li> <li>Trust money.</li> <li>Trust accounts.</li> <li>Costs disclosure.</li> <li>Costs agreements.</li> <li>Billing.</li> <li>Costs assessments.</li> <li>Professional indemnity insurance.</li> <li>Fidelity cover contributions and levies.</li> <li>Foreign lawyers</li> </ul>	<p><b>External intervention</b></p> <ul style="list-style-type: none"> <li>ILP compliance audits.</li> <li>Trust account investigation.</li> <li>Trust account external examination.</li> <li>Trust account supervision.</li> <li>External management</li> <li>Receivers</li> <li>Information and document disclosure.</li> <li>Access to premises.</li> <li>Consumer remedies</li> </ul>	<p><b>Complaints and discipline</b></p> <ul style="list-style-type: none"> <li>Lodgment and handling.</li> <li>Mediation.</li> <li>Investigation.</li> <li>Consumer remedies.</li> <li>Disciplinary Tribunal.</li> </ul>	
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**Overview: Key State and Territory Regulatory Functions (waiting on comments from some jurisdictions – any updates will be provided).**

State/ Territory	Admission— recommend to Supreme Court	Standards— admission	Practising Certificate— grant, renewal	Standards— practising certificates	Standards— Professional Rules	Complaints- handler	Discipline— investigation	Discipline— decision-making
<b>Vic</b>	Board of Examiners	Legislation Council of Legal Education Law Admissions Consultative Committee	Professional Bodies (delegated by the Legal Services Board)	Legislation Legal Services Board	Legal Services Board; and Professional Bodies (with the approval of the Board)	Legal Services Commissioner	Legal Services Commissioner and Professional Bodies (referred by the Board)	Legal Services Commissioner (for unprofessional conduct); Victorian Civil & Administrative Tribunal (for professional misconduct); Supreme Court (removal from roll)
<b>NSW</b>	Legal Profession Admission Board	Legislation Admissions Board Examinations Committee Legal Qualifications Committee	Professional Bodies	Legislation Professional bodies	Professional Bodies (after consulting Commissioner)	Legal Services Commissioner	Legal Services Commissioner	Legal Services Commissioner; Professional Bodies; Administrative Decisions Tribunal; Court
<b>Qld</b>	Legal Practitioners Admissions Board	Legislation Supreme Court	Professional Bodies	Legislation Professional Bodies	Professional Bodies (with Min notifying); Legal Practice Committee monitors rules	Legal Services Commissioner	Legal Services Commissioner or Professional Bodies (on behalf of the Commissioner)	Legal Practice Tribunal; Legal Practice Committee; Court

<b>State/ Territory</b>	<b>Admission— recommend to Supreme Court</b>	<b>Standards— admission</b>	<b>Practising Certificate— grant, renewal</b>	<b>Standards— practising certificates</b>	<b>Standards— Professional Rules</b>	<b>Complaints- handler</b>	<b>Discipline— investigation</b>	<b>Discipline— decision-making</b>
<b>ACT</b>	Legal Practitioners Admissions Board	Legislation Admissions Board	Professional Body	Legislation Professional body	Professional Bodies (with Minister notifying)	Professional Bodies Complaints Committee	Professional Bodies Complaints Committee	ACT Civil and Administrative Tribunal; Court
<b>WA</b>	Legal Practice Board	Legal Practice Board	Legal Practice Board	Legal Practice Board	Legal Practice Board	Legal Profession Complaints Committee	Legal Profession Complaints Committee	Complaints Committee; State Administrative Tribunal; Court
<b>SA</b>	Board of Examiners	Legal Practitioners Education and Admission Council	Supreme Court – delegated to Professional Body	Legal Practitioners Education and Admission Council	Professional Body	Legal Practitioners Conduct Board	Legal Practitioners Conduct Board	Legal Practitioners Conduct Board; Legal Practitioners Disciplinary Tribunal; Court
<b>Tas</b>	Board of Legal Education (Legal Profession Board & Professional Bodies may object to admission)	Board of Legal Education	Professional Body	Legislation Professional Body	Professional Body	Legal Profession Board	Legal Profession Board	Legal Profession Board; Disciplinary Tribunal; Court
<b>NT</b>	Admission Board (Professional Body may object to admission)	Admissions Board	Professional Body	Legislation Professional Body	Professional Body (rules disallowable by AG)	Professional Body	Professional Body	Disciplinary Tribunal; Court

## Victoria

The *Legal Profession Act 2004* (Vic) establishes the Legal Services Board, the Legal Services Commissioner and the Victorian Civil and Administrative Tribunal as the key bodies responsible for regulating the profession in Victoria. The Act sets out functions for those and other entities, such as the Board of Examiners and the Council of Legal Education.

The Legal Services Board is the peak regulator for the legal profession in Victoria and has a wide range of regulatory functions, a number of which have been delegated to the professional associations in Victoria (the Law Institute of Victoria and the Victorian Bar). Delegated functions are carried out in accordance with applicable Board policies.

Function	Who performs this function?
Admission to the Supreme Court	Board of Examiners (considers applications for admission and makes recommendations to the Supreme Court)  Council of Legal Education (responsible for determining training and educational requirements, Admission Rules, making determinations with respect to overseas applicants for admission)
Practising certificate matters (grant, renewal, suspension, cancellation)	Delegated to the Victorian Bar by the Board (for barristers)  Delegated to the Law Institute of Victoria by the Board (other practitioners)
Maintenance of the register of practitioners and law practices	The Board
Local registration of foreign lawyers	The Board
Review of administrative decisions under the Act including practising certificate determinations	Victorian Civil and Administrative Tribunal (Legal Practice List)
Making of legal profession rules	The Board The Law Institute of Victoria, with the approval of the Board The Victorian Bar, with the approval of the Board
Setting professional indemnity insurance requirements	The Board
Provision of professional indemnity insurance to law practices	Legal Practitioners Liability Committee

Administration of funds under the Act (including the Public Purpose Fund and the Fidelity Fund)	The Board
Determination of claims against the Fidelity Fund	The Board
Investigation of claims against the Fidelity Fund	Delegated to the Law Institute of Victoria by the Board

Trust account investigations	Delegated to the Law Institute of Victoria by the Board
Trust account approved course	The Board has approved the Law Institute of Victoria course
Administration and management of law practice trust accounts	The Board
Appointment of external intervention of law practices	The Board (Re appointing a receiver, the Supreme Court does so on application of the Board)
Conduct of external intervention of law practices	Persons appointed by the Board

Receipt and management of complaints against lawyers	Legal Services Commissioner
Educate the profession about issues of concern to the profession and consumers	Legal Services Commissioner and the Professional Bodies
Educate the community about legal issues and the rights and obligations that flow from the client-practitioner relationship	Legal Services Commissioner and the Professional Bodies

Making of disciplinary orders for unsatisfactory professional conduct or professional misconduct	Legal Services Commissioner (reprimand or caution) Victorian Civil and Administrative Tribunal (VCAT) (Legal Practice List)
Hearing appeals from VCAT on points of law; removing practitioners from the roll of practitioners of the Supreme Court	Supreme Court of Victoria

## *New South Wales*

The *Legal Profession Act 2004* (NSW) establishes the Legal Profession Admission Board and the appointment of a Legal Services Commissioner. It also stipulates the functions of the Board and Commissioner, and sets out the roles of the professional bodies.

Function	Who performs this function?
Admission to the Supreme Court	Legal Profession Admission Board (considers applications for admission and makes recommendations to the Supreme Court)
Practising certificate matters (grant, renewal, suspension, cancellation)	Bar Association of NSW (for barristers) Law Society of NSW (other solicitors)
Maintenance of the register of local practitioners (lawyers with NSW practising certificates)	Bar Association of NSW (for barristers) Law Society of NSW (other solicitors)
Local registration of foreign lawyers	Bar Association of NSW (for barristers) Law Society of NSW (other solicitors)
Review of practising certificate decisions (refusal to grant or renew, or amending, suspending or cancelling)	Supreme Court of NSW
Making of legal profession rules	Bar Association of NSW (for barristers) Law Society of NSW (for solicitors) both professional bodies for joint rules (after consulting and taking into account the views of the Commissioner) NB: Commissioner may ask the professional bodies to review rules and may recommend to the Minister that a rule be declared inoperative.
Approving professional indemnity insurance policies	Minister
Provision of professional indemnity insurance to law practices	LawCover Insurance Pty Ltd for solicitors Barristers get their PII on the open market, policies approved by AG.
Administration of the Solicitors Mutual Indemnity Fund (to pay difference between indemnity provided by insurer and claimed amount)	'The Company', ie LawCover (a wholly owned subsidiary of the Law Society)
Administration of the Public Purpose Fund	Trustees of the Fund appointed by the Minister: two members of the Law Society; one other person whom the Minister considers appropriate; and the Director-General of the Minister's

	Department
Administration of the Fidelity Fund	Law Society of NSW Council (which may delegate functions to a Management Committee)
Determination of claims against the Fidelity Fund	Law Society of NSW
Investigation of claims against the Fidelity Fund	Law Society of NSW

Trust account investigations	Investigator appointed by the Law Society of NSW
External examination of law practices	Supervisors or Managers appointed by the Law Society of NSW or receivers appointed by Supreme Court upon application of the Law Society. Managers appointed by the Bar Association.
Appointment of external intervention of law practices	Law Society of NSW (Re appointing a receiver, the Supreme Court does so on application of the Law Society)

Receipt and management of complaints against lawyers	Legal Services Commissioner
Complaints handling – mediation and investigation	Legal Services Commission and professional bodies (once referred by LSC)
Promote community education about the regulation and discipline of the legal profession	Legal Services Commissioner and professional bodies

Decision-making regarding unsatisfactory professional conduct (caution, reprimand, compensation order or imposition of conditions)	Legal Services Commissioner Councils of professional bodies Administrative Decisions Tribunal
Making of disciplinary orders for professional misconduct	Legal Services Commissioner Councils of professional bodies - Prosecutions taken forward for decision by Administrative Decisions Tribunal
Maintenance of disciplinary register	Legal Services Commissioner

## Queensland

The *Legal Profession Act 2007* (Qld) provides for the continuation of the Legal Practitioners Admissions Board, the Legal Services Commission, the Legal Practice Tribunal and the Legal Practice Committee established under the 2004 Act. It stipulates the functions of those institutions, and sets out the roles of the professional bodies.

Function	Who performs this function?
Admission to the Supreme Court	Legal Practitioners Admissions Board (considers applications for admission and makes recommendations to the Supreme Court, which is the admitting authority.)
Appeal against refusal of the Legal Practitioners Admissions Board to make a declaration under the early consideration of suitability provision.	Court of Appeal
Practising certificate matters (grant, renewal, suspension, cancellation)	Queensland Law Society (solicitors) Bar Association of Queensland (barristers)
Maintenance of the register of local practitioners (lawyers with Queensland practising certificates)	Queensland Law Society and Bar Association of Queensland
Local registration of foreign lawyers	Queensland Law Society
Appeal of practising certificate decisions (refusal to grant or renew, or amending, suspending or cancelling)	Supreme Court
Making of legal profession rules	Queensland Bar Association (for barristers) Queensland Law Society (for solicitors) subject to the Minister notifying the making of them (making them subordinate legislation) NB: The Legal Practice Committee (statutory body) monitors the rules and can make recommendations to the Minister regarding them
Approving standards for professional indemnity insurance	Minister (through regulation)
Approving and managing professional indemnity insurance policy	Queensland Bar Association (for barristers) Queensland Law Society (for solicitors)
Provision of professional indemnity insurance to law practices	Lexon Insurance Pty Ltd (solicitors) Insurers approved by the Bar Association of Queensland for 2008: Suncorp; Aon; and Marsh.

Administration of the Legal Practitioner Interest on Trust Accounts Fund	Department of Justice and Attorney General; Minister decides disbursement after receiving recommendation of Chief Executive
Administration of the Fidelity Fund	Queensland Law Society (which may delegate functions to a Management Committee)
Determination of claims against the Fidelity Fund	Queensland Law Society
Investigation of claims against the Fidelity Fund	Queensland Law Society

Trust account investigations	Queensland Law Society
External examination of law practices	External examiner appointed by the law practice The Queensland Law Society may appoint an external examiner (s268)
Appointment of external intervention of law practices	Queensland Law Society

Receipt and management of complaints against lawyers	Legal Services Commissioner
Investigates disciplinary complaints	Legal Services Commissioner or Queensland Law Society/Bar Association (on behalf of the Commissioner)
Initiates proceedings in Legal Practice Tribunal	Legal Services Commissioner

Decision-making regarding unsatisfactory professional conduct	Legal Practice Committee (less serious cases and complaints about non-lawyer, law practice employees; can give caution, reprimand, fines (up to \$10,000), compensation order, imposition of conditions) Legal Practice Tribunal (can do all of the above, plus fines up to \$100,000, suspension and striking off)
Making of disciplinary orders for professional misconduct	Legal Practice Tribunal (to be replaced by the Queensland Civil and Administrative Tribunal from 1 December 2009)
Review of disciplinary decisions	Legal Practice Tribunal (reviews decisions of Committee) Court of Appeal (reviews decisions of Tribunal or , with leave, of the Committee)

### *Australian Capital Territory*

The *Legal Profession Act 2006* (ACT) establishes the Legal Practitioners Admissions Board and sets out the functions of that Board and the professional bodies.

<b>Function</b>	<b>Who performs this function?</b>
Admission to the Supreme Court	Legal Practitioners Admissions Board (considers applications for admission and makes recommendations to the Supreme Court)
Practising certificate matters (grant, renewal, suspension, cancellation)	The Law Society
Maintenance of the register of local practitioners (lawyers with ACT practising certificates)	The Law Society
Local registration of foreign lawyers	The Law Society
Review of practising certificate decisions (refusal to grant or renew, or amending, suspending or cancelling)	Supreme Court
Making of legal profession rules	Bar Association (for barristers) Law Society (for solicitors and Australian-registered foreign lawyers) subject to the Minister notifying the making of them (making them subordinate legislation)
Approving professional indemnity insurance	Law Society
Provision of professional indemnity insurance to law practices	(Two insurance providers.)
Determination of claims against the Fidelity Fund	Law Society
Investigation of claims against the Fidelity Fund	Law Society
Trust account investigations	Investigator appointed by the Law Society
External examination of law practices	External examiners designated by the Law Society
Appointment of external intervention of law practices	Law Society (Re appointing a receiver, the Supreme Court does so on application of the Law Society)
Receipt and management of complaints against lawyers	Law Society/Bar Association
Decision-making regarding complaints	Law Society/Bar Association

Review of complaints decisions	ACT Civil and Administrative Tribunal
Making of disciplinary orders	ACT Civil and Administrative Tribunal
Appeals of disciplinary orders	Supreme Court (no merits review)

## Western Australia

The *Legal Profession Act 2004* (WA) establishes the Legal Practice Board and the Legal Profession Complaints Committee. It also stipulates the functions of the Board and Commissioner, and sets out the roles of the professional bodies.

Function	Who performs this function?
Admission to the Supreme Court	Legal Practice Board (considers applications for admission and makes recommendations to the Supreme Court)
Practising certificate matters (grant, renewal, suspension, cancellation)	Legal Practice Board
Maintenance of the register of local practitioners (lawyers with NSW practising certificates)	Legal Practice Board
Local registration of foreign lawyers	Legal Practice Board
Review of practising certificate decisions (refusal to grant or renew, or amending, suspending or cancelling)	State Administrative Tribunal
Making of legal profession rules	Legal Practice Board
Find professional indemnity insurance policies	Law Society of WA
Provision of professional indemnity insurance to law practices	'Law Mutual' – a registered business name and is operated by the Law Society of Western Australia
Administration of the Solicitors' Guarantee Fund (fidelity fund)	The Legal Contribution Trust
Determination of claims against the Fidelity Fund	The Legal Contribution Trust
Investigation of claims against the Fidelity Fund	The Legal Contribution Trust
Trust account investigations	Investigator appointed by the Legal Practice Board
External examination of law practices	External examiners designated by the Legal Practice Board
Appointment of external intervention of law practices	Legal Practice Board (Re appointing a receiver, the State Administrative Tribunal does so on application of the Board)
Receipt and management of complaints against lawyers	Legal Profession Complaints Committee

Decision-making regarding unsatisfactory professional conduct	Legal Profession Complaints Committee (caution, reprimand, compensation order or imposition of conditions) State Administrative Tribunal (can do all of the above, plus suspension and striking off)
Making of disciplinary orders for professional misconduct	State Administrative Tribunal
Review of disciplinary decisions	State Administrative Tribunal (reviews decisions of Committee) Supreme Court (reviews decisions of Tribunal; no merits review)

## *South Australia*

The *Legal Practitioners Act 1981* (SA) establishes the Legal Practitioners Education and Admission Council, the Board of Examiners, the Legal Practitioners Conduct Board and the Legal Practitioners Disciplinary Tribunal. It sets out the functions of those bodies and the Law Society of South Australia.

<b>Function</b>	<b>Who performs this function?</b>
Admission to the Supreme Court	Board of Examiners (considers applications for admission and makes recommendations to the Supreme Court)
Practising certificate matters (grant, renewal, suspension, cancellation)	Supreme Court – delegated to the Law Society
Maintenance of the register of local practitioners (lawyers with NSW practising certificates)	Supreme Court – delegated to the Law Society
Local registration of foreign lawyers	Supreme Court – delegated to the Law Society
Making of legal profession rules	Law Society
Setting up professional indemnity insurance scheme	Law Society with approval of the Attorney-General
Administration of the professional indemnity insurance scheme	'Law Claims' section of the Law Society
Administration of the Legal Practitioners' Guarantee Fund (fidelity fund)	Law Society (through Deed of Trust)
Determination of claims against the Fidelity Fund	Law Society, but no payments made without Attorney-General authorisation
Investigation of claims against the Fidelity Fund	Law Society
Trust account investigations	Investigator appointed by the Law Society
External examination of law practices	External examiners appointed by the Law Society
Appointment of external intervention of law practices	Law Society
Receipt and management of complaints against lawyers	Legal Practitioners Conduct Board
Investigations of conduct	Legal Practitioners Conduct Board
Decision-making regarding consumer complaints (delay, lack of communication)	Legal Practitioners Conduct Board
Making of disciplinary orders	Legal Practitioners Conduct Board (if minor misconduct, can reprimand, order

	<p>payment, impose conditions on practice);  Legal Practitioners Disciplinary Tribunal  (can fine and suspend);  Supreme Court (matter can be taken to  the Court on recommendation from the  Tribunal; Court can suspend for longer  and strike from roll)</p>
Appeals of disciplinary orders	Supreme Court (review of Tribunal decisions)

## Tasmania

The *Legal Profession Act 2007* (Tas) establishes the Legal Profession Board, the Board of Legal Education and the Disciplinary Tribunal. It stipulates the functions of those institutions, and sets out the roles of the professional bodies.

Function	Who performs this function?
Admission to the Supreme Court	Board of Legal Education (advises the Supreme Court) (Legal Profession Board and Law Society may object to admission)
Practising certificate matters (grant, renewal, suspension, cancellation)	Law Society
Maintenance of the register of local practitioners (lawyers with NSW practising certificates)	Legal Profession Board
Local registration of foreign lawyers	Law Society
Review of practising certificate decisions (refusal to grant or renew, or amending, suspending or cancelling)	Supreme Court
Making of legal profession rules	Law Society (after consulting the Legal Profession Board and any relevant association)
Approving professional indemnity insurance policies	Law Society
Provision of professional indemnity insurance to law practices	
Administration of the Solicitors' Guarantee Fund	The Solicitors' Trust
Payment from the Solicitors' Guarantee Fund for legal aid, etc	Attorney-General
Determination of claims against the Fidelity Fund	The Solicitors' Trust
Investigation of claims against the Fidelity Fund	The Solicitors' Trust
Trust account investigations	Investigator appointed by the Law Society
External examination of law practices	External examiners designated by the Law Society
Appointment of external intervention of law practices	Law Society (Re appointing a receiver, the Supreme Court does so on application of the Legal Profession Board)

Receipt and management of complaints against lawyers	Legal Profession Board
Decision-making regarding unsatisfactory professional conduct	Legal Profession Board (caution, reprimand or imposition of conditions) Disciplinary Tribunal (Board may refer matter to Tribunal and recommend compensation order)
Making of disciplinary orders for professional misconduct	Legal Profession Board (interim orders) Disciplinary Tribunal and Supreme Court

## *Northern Territory*

The *Legal Profession Act* (NT) establishes the Admission Board and the Disciplinary Tribunal. It stipulates the functions of those institutions, and sets out the roles of the professional bodies.

<b>Function</b>	<b>Who performs this function?</b>
Admission to the Supreme Court	Admission Board (advises the Supreme Court) (Law Society may object to admission)
Practising certificate matters (grant, renewal, suspension, cancellation)	Law Society
Maintenance of the register of local practitioners (lawyers with NSW practising certificates)	Law Society
Local registration of foreign lawyers	Law Society
Review of practising certificate decisions (refusal to grant or renew, or amending, suspending or cancelling)	Supreme Court
Making of legal profession rules	Law Society (after consulting) NB: Attorney-General may disallow rules
Approval of professional indemnity insurance scheme	Law Society
Provision of professional indemnity insurance to law practices	QBE Insurance (Australia) Ltd (having been chosen after going to the market through a broker, Marsh Pty Ltd)
Administration of the Fidelity Fund	The Funds Management Committee
Determination of claims against the Fidelity Fund	Law Society
Investigation of claims against the Fidelity Fund	Law Society
Trust account investigations	Investigator appointed by the Law Society
External examination of law practices	External examiners designated by the Law Society
Appointment of external intervention of law practices	Law Society
Receipt and management of complaints against lawyers	Law Society (‘consumer disputes’ referred to mediator for mediation)
Decision-making regarding unsatisfactory professional conduct or professional misconduct	Law Society (reprimand and fine up to 50 penalty units; may dismiss complaints) Disciplinary Tribunal
Appeal of disciplinary decisions	Supreme Court

## COAG Best Practice Principles for Regulation

### ***Principle 1: Establishing a case for action before addressing a problem.***

An important first step before considering any action is to examine closely whether there is a problem, and to make an initial decision on whether any action is required.

### ***Principle 2: A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs considered.***

Once the problem has been examined and a case for government intervention has been established, officers should identify the objectives for any intervention and consider all feasible options, of both a regulatory and non-regulatory nature, that could wholly or partly achieve these objectives. Working from an initial presumption against new or increased regulation, the overall goal is the effective and efficient achievement of the stated objectives. The 'status quo' and effectiveness of existing regulations should be considered as an option for meeting the objectives.

### ***Principle 3: Adopting the option that generates the greatest net benefit for the community.***

This requires a rigorous regulation impact assessment of all the feasible policy options available to address the identified problem. Decision makers should adopt the option which provides the greatest net benefit to the community. Decisions about whether regulatory action is in the public interest should be informed by an assessment of the effectiveness of the proposed action in meeting the identified objective, and the costs and benefits of the proposed action for the community as a whole.

### ***Principle 4: In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that: the benefits of the restrictions to the community as a whole outweigh the costs; and the objectives of the regulation can only be achieved by restricting competition.***

Many existing and proposed regulations and requirements restrict competition, including by imposing barriers to entry, exit, or innovation, and can have the effect of restricting consumer choice, raising prices and reducing overall economic efficiency and productivity. As far as possible, restrictions on competition should be avoided or minimised. Regulation should only restrict competition where this is necessary to achieve the objective, and the benefits of restricting competition outweigh the costs.

### ***Principle 5: Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear.***

When making a decision to adopt a regulatory solution to a problem in order to deliver the greatest net benefit for the community, it is necessary to clearly articulate any decision and new regulations for the benefit of regulators administering the solution as well as regulated parties. Regulation should have clearly identifiable outcomes and unless prescriptive requirements are unavoidable in order to ensure public safety in high-risk situations, performance-based requirements that specify outcomes rather than inputs or other prescriptive requirements should be used. Good regulation should attempt to standardise the exercise of bureaucratic discretion, so as to reduce discrepancies between government regulators, reduce

uncertainty and lower compliance costs. Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties. Where possible, regulatory instruments should be drafted in 'plain language' to improve clarity and simplicity, reduce uncertainty and enable the public to understand better the implications of regulatory measures.

***Principle 6: Ensuring that regulation remains relevant and effective over time.***

To ensure regulation remains relevant and effective over time it is important that all regulation be reviewed periodically. All governments have committed to reviewing annually existing regulations with a view to encouraging competition and efficiency, streamlining the regulatory environment, and reducing the regulatory burden on business arising from the stock of regulation. Ensuring that regulation remains relevant and effective over time may be achieved through planning for monitoring and review of regulation as part of the development of new regulatory proposals, or by incorporating sunset provisions or review requirements in legislative instruments.

***Principle 7: Consulting effectively with affected key stakeholders at all stages of the regulatory cycle.***

There should be effective consultation with affected key stakeholders at all stages of the regulatory cycle. Public consultation is an important part of any regulatory development process. Consultation should occur when the options for regulatory action are being considered and a draft RIS (also known as the 'Consultation RIS') has been produced. This will give interested parties a range of options and also in some cases a firm proposal to consider. Consultation on regulatory options can improve the quality of the solution adopted by:

- ensuring that both those affected by regulation, and the actioning agencies, have a good understanding of what the problem is
- providing perspectives and suggestions, on alternative options to address the problem, from those parties that will be affected by the government action
- helping regulators assess competing interests
- providing a check on the regulator's assessment of costs (including compliance costs) and benefits and whether/how the proposed option will work in practice, thus reducing the risk of unintended consequences if a particular option is adopted
- identifying interactions between different types of regulations; and
- possibly enhancing voluntary compliance through greater understanding and acceptance of a proposal, thereby reducing reliance on enforcement and sanctions.

**Principle 8: Government action should be effective and proportional to the issue being addressed.**

In all responses to identified problems, government action should be effective and proportional to the issue being addressed. Effectiveness should be judged solely in terms of meeting the specified objective. Consideration should be given to the effectiveness of implementation and administration and, as relevant, an assessment of likely compliance rates should be made taking into account matters such as incentive structures and costs to regulated parties. Proportionality involves ensuring that government action does not 'overreach', or extend beyond addressing a specific problem or achieving the identified objective. The scope or nature of government action should be commensurate with the magnitude of a problem, its impacts, or the level of risk without action. The principle of proportionality applies equally to the implementation of regulation, including the development of frameworks for ensuring compliance.