National Legal Profession Reform Project

Consultation Regulation Impact Statement






National Legal Profession Reform Project – Consultation Regulation Impact Statement

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1 Executive summary

The National Legal Profession Reform project was initiated by the Council of Australian Governments (COAG) to create uniform national legal profession regulation as part of its microeconomic reform agenda. Jurisdictions have been working toward consistent national regulation for many years, however substantial differences remain.

At the request of COAG, the National Legal Profession Reform Taskforce has produced draft National Law and subordinate legislation, National Rules, to uniformly regulate the profession. The Taskforce's draft legislation also aims to simplify and improve the effectiveness of legal profession regulation.

Considerable benefits are expected to flow from the reforms in the form of reduced compliance costs for law practices and practitioners and more effective regulation for consumers. The Taskforce intends that its proposals will not result in increased costs to government in regulating the profession, as the costs of national institutions will be minimised and offset by efficiencies gained under the proposals.

There are many options for national legal profession regulation. These include the option of the Taskforce's package of legislation, its Bill, and its subordinate legislation, the National Rules, and options within this package relating to key changes proposed, including a regulatory framework.

The Taskforce's preferred options, as presented in the draft National Law and Rules, aim to incorporate best practice and provide uniform, simpler and more effective legal profession regulation. The Taskforce's preferred options for the regulatory framework are those which will promote ongoing national uniformity, leave appropriate functions at a local level and leave the regulation of the legal profession in State and Territory hands.

The Taskforce has benefitted in the development of its proposed legislation from the input of the Consultative Group for this project, numerous public submissions and ad hoc targeted consultation. However the release of the package of the proposed National Law, National Rules, this regulation impact statement and a Consultation Report, will provide the most substantial opportunity for public comment.

2 Background

2.1 The COAG reform

On 5 February 2009, as part of its microeconomic reform agenda, the Council of Australian Governments (COAG) decided to initiate national reform of the regulation of the legal profession across Australia. At the request of COAG, on 30 April 2009, the Commonwealth Attorney-General established a Taskforce to prepare draft uniform legislation to regulate the legal profession and to make recommendations outlining a proposed national regulatory framework.

2.1.1 History of work towards uniformity

National regulation of the legal profession has been a goal for many years.

The first steps toward facilitating cross-jurisdictional practice came with the National Competition Policy reforms of the 1990s. The resulting advent of mutual recognition of interstate practice significantly improved legal profession regulation.

At the July 2001 Standing Committee of Attorneys-General (SCAG) meeting, Ministers discussed the need for a more uniform approach to the regulation of the legal profession and agreed that officers should develop proposals for model laws for consideration by Ministers. The aim of the model provisions was to achieve greater consistency and uniformity in legal profession regulation in order to facilitate legal practice across State and Territory jurisdictions. In March 2002, SCAG commenced the National Practice Model Laws Project.

In 2004 a Model Bill for the regulation of the legal profession was produced for adoption by the States and Territories. The Model Bill was aimed at harmonising, not unifying, the laws across jurisdictions. In August 2006, a revised version of the Model Bill was released (and with minor corrections was released again on 2 February 2007).

In developing the Model Bill, SCAG did not commit to enacting textually identical laws and in practice, significant variation exists between the legal profession laws and regulatory structures of each State and Territory.

The SCAG Model Bill has been implemented by New South Wales, Victoria, Queensland, the Northern Territory, Tasmania and the Australian Capital Territory and commenced in early 2009 in Western Australia. South Australia has to date been unable to enact the Model Bill because of a deadlock over the Bill in the South Australian Legislative Council.

2.1.2 National Legal Profession Reform Taskforce

The Taskforce, appointed by the Commonwealth Attorney-General, is made up of five senior members of the Commonwealth, New South Wales, Victorian and Australian Capital Territory Governments and the Law Council of Australia. It includes:

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

The legislation developed by the Taskforce in response to COAG's request intends not only to unify, but also to simplify and increase the effectiveness of legal profession regulation. The goal of the Taskforce has been complete, substantive and enduring uniformity that eliminates unnecessary regulatory burden, compliance costs and other barriers to providing affordable, quality legal services, and which enhances consumer protection. There is near-unanimous support for the project's goal of uniform national regulation.

A Consultative Group bringing together expertise from government and independent legal regulators, the courts, consumers, the legal profession and legal educators has assisted and advised the Taskforce in developing proposals. A Working Group of officers to support the Taskforce has had resources contributed from the New South Wales, Victorian and Commonwealth Governments and the Law Council of Australia.

2.2 The Australian legal profession

Australian legal services contributed $11 billion to the Australian economy and generated $18 billion in income in 2007/08, according to figures released by the Australian Bureau of Statistics (ABS).[1]

Income from legal and legal support services accounted for approximately 91% of all total income generated. Government funding accounted for a further 6% of total income.

In total, there were 15,326 legal services businesses and organisations operating 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 people 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 Australia in June 2008.

2.3 Current regulation of the legal profession

2.3.1 Regulation as a profession

Lawyers are regulated as a profession, rather than an industry or occupation. The courts and legislators have always demanded higher standards of conduct and practice from professionals, including medical practitioners, accountants and lawyers, and they continue to do so today.

Historically, the courts and the profession itself have played a primary role in regulating the profession, but, in more recent times, there has been a shift towards co-regulation between the courts, professional associations and (in most jurisdictions) independent statutory regulators.

[1] ABS Media Release *Legal Services Contribute $11 billion to the Australian Economy* June 24 2009.

2.3.2 Purpose of legal profession regulation

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

- that persons not appropriately qualified and authorised to do so, provide legal services to Australian consumers, and
- that persons, although 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 terms of the provision of legal services, regulatory outcomes include:

- adequately protecting and compensating consumers when legal services provided to them fall short of standards for consumer protection
- promoting the efficient and effective administration of justice and maintaining public confidence in the justice system, and
- promoting healthy competition within the legal services market.

Government involvement in legal profession regulation also helps address the problem of information asymmetry in the lawyer/client relationship, which economists recognise as a classic form of market failure.

2.3.3 Current regulation

Legal profession regulation in Australia is primarily governed by State and Territory law. Legal profession regulation covers entry to the legal profession, practising entitlements and conditions, the form and manner in which legal practice is conducted, complaints handling and disciplinary matters, and consumer protections and remedies.

3 Statement of the problem

The National Legal Profession Reform Project intends not only to unify but also to simplify and increase the effectiveness of legal profession regulation.

3.1 Lack of uniformity

3.1.1 Different rules governing the legal profession

Despite the long recognition of the desirability of national uniformity, considerable differences between jurisdictions remain. These are a source of unnecessary compliance costs for practitioners. These costs are likely to be ultimately borne by consumers.

Considerable effort was invested in the development of the legal profession Model Bill, however the various Legal Profession Acts which adopt it are lengthy, complex and adopt different drafting approaches. The Model Bill approach has not removed the need for national and multi-jurisdictional law practices to know, apply and comply with multiple Legal Profession Acts and their associated regulations.

The Model Bill allowed for variations in a number of areas, which led jurisdictions to different implementations. The disparity between jurisdictions has been compounded by the fact that jurisdictions have, over the past few years, introduced a large number of amendments to their Legal Profession Acts without following the consultation processes outlined in the 2004 Memorandum of Understanding.

The result is that neither textual nor effective consistency exists in many areas of legal profession regulation, even within Model Bill jurisdictions. These include:

- the regulatory frameworks and the roles of institutions within them
- the definitions and meaning of operative terms in the legislation underpinning the regulatory frameworks
- admission requirements and practising certificate classes and conditions
- standards for, and content of, continuing professional development or education
- notification requirements on legal practitioners wishing to practise in another jurisdiction
- limitations on advertising
- costs disclosure, agreements, billing and assessments
- the management of trust accounts
- professional indemnity insurance requirements
- complaints-handling and discipline, and
- penalties for non-compliance or breaches of legal profession legislation and rules.

Consultation with Large Law Firm Group has suggested that up to $15 million is wasted each year just by large firms duplicating procedures for each jurisdiction's requirements. A submission from the Large Law Firms Group has noted the burden for law firms practicing across jurisdictions of ensuring compliance with each jurisdiction's requirements in relation to requirements for practice, professional conduct rules, continuing professional development, cost disclosures and billing, trust accounts, fidelity funds and professional indemnity insurance requirements. These burdens apply equally for smaller cross-jurisdictional practices.

These different regulatory requirements also create a need to re-learn the regulatory systems when legal practitioners provide or their clients purchase legal services in a different jurisdiction. The difficulty with these differences is compounded by the complexity of the requirements in each jurisdiction.

3.1.1.1 Trust regulation

The burden of disparate regulation is particularly apparent in the area of trust regulation. Law practices receiving trust money in more than one jurisdiction must generally maintain separate trust accounts in order to satisfy differences in legislative and administrative rules and practices. Trust accounting is a particularly complex area of law and even subtle differences between jurisdictions' requirements create a need for different internal compliance systems for each jurisdiction. Trust accounts are also required to be audited on a state-by-state basis, creating further inefficiencies.

3.1.2 Barriers to national practice

Practitioners continue to be admitted and granted practising certificates in their home jurisdictions and local and interstate practitioners are treated differently in the Legal Profession Acts. Practising certificate types also vary considerably between jurisdictions, creating competition inequalities and regulatory inefficiencies. A table of practising certificate categories and fees is at **Attachment A**.

Although mutual recognition has gone a considerable way to allowing legal practitioners to practise outside their home jurisdiction, administrative burdens continue to apply and differ between jurisdictions. The regulatory burden is evident in the notification requirements for lawyers and law practices that offer legal services in more than one jurisdiction. For example, an interstate lawyer 'establishing an office' in Western Australia is required to notify the Western Australian Legal Practice Board of this, when they first offer or provide legal services. A similar notification obligation is imposed on interstate lawyers in SA. In Victoria, an interstate lawyer must notify the Legal Services Board if they become authorised to make withdrawals from a trust account. All jurisdictions retain the ability to impose conditions on interstate lawyers' rights to practise and to subject them to all the duties and obligations of a local practitioner.

In the case of incorporated legal practices and multi-disciplinary partnerships, firms are presently required to make notifications to the appropriate regulator in every State or Territory in which they intend to engage in legal practice. This is archaic, expensive and administratively burdensome.

3.1.2.1 Facilitating volunteering

There is currently no uniform mechanism for entitling volunteers to practice. In some jurisdictions, volunteers are required to pay for a volunteer practising certificate, while in others they may either obtain one for free, or utilise their existing practising certificate. This creates disincentives to volunteer in some jurisdictions.

3.1.3 Differences between regulatory frameworks

The structure of regulatory bodies also differs significantly across jurisdictions. For example complaints in some jurisdictions are handled by an independent statutory complaints handler, while in other jurisdictions professional associations are responsible for the management of complaints.

3.1.4 Regulatory duplication

Separate regulatory regimes in each of the eight State and Territory jurisdictions, and multiple regulatory bodies within each jurisdiction, create regulatory costs in administering bodies and in maintaining different legislation and subordinate instruments in each jurisdiction.

3.1.4.1 Legislation and rule making

Maintaining legal profession legislation and subordinate instruments in each jurisdiction duplicates regulatory work. There are up to eight rule-makers in several areas, including in approving legal education or training courses or providers, and entities assessing and registering foreign lawyers. While it is desirable to have local entities administering some areas of legal profession regulation, for example an on the ground presence can assist in handling complaints, duplication in all regulatory areas is unnecessary, particularly the making of rules.

The legal profession has also recognised that duplication in rule-making is neither necessary nor desirable and is acting on that now, separately from the National Legal Profession Reform process. The Law Council of Australia and Australian Bar Association are working towards national conduct rules that would replace those which have previously been developed by professional associations in each jurisdiction. These will be the first national iteration of regulatory work that lawyers have been carrying out at a State and Territory level for many years. They cover important conduct standards in areas that include a paramount duty to the court, relationships with clients, advocacy standards and relationships with other solicitors.

3.1.4.2 Disconnected information

As well as cost inefficiencies, separate record systems can create information barriers. The ability to "use intelligence [or information] well, to improve risk assessment and the allocation of regulatory effort" has been identified as a common challenge faced by regulators.[2] At present there is no central register of admissions, practising certificates, disciplinary orders and registrations of foreign lawyers, combining information from all jurisdictions. This is despite this information being relevant to courts and regulators in all jurisdictions in which practitioners and law practices provide legal services. The disconnection of information in the jurisdictions, due to information being housed by different bodies, creates barriers to legal profession regulators using this information effectively and efficiently.

3.2 Complexity

3.2.1 Complexity of rules governing the legal profession

Legal profession regulation is currently not only varied, but long and highly complex. Feedback from the Consultative Group has noted that the complexity of the regulation:

- makes it difficult to find applicable provisions in the legislation
- confuses the public, for example in relation to costs
- creates a 'common complaint' of overregulation due to 'prescriptive and onerous legislation that does not properly address the real risks', and
- reduces access to justice.

Nationally, over 4,700 pages of legislation, regulation and rules govern the legal profession. The Model Bill comprises more than 300 pages. Legislation adopting the Model Bill that was enacted in the States (except

[2] The Hunt Review of the Regulation of Legal Services (2009) at 113.

South Australia) and Territories is much longer, owing to local variation and some matters being governed entirely by local provisions. State and Territory laws based on the Model Bill vary in length from 360 pages in Western Australia to 783 pages in Tasmania, with other jurisdictions having approximately 400 to 500 pages. A table of the legislation and regulations governing the legal profession is at **Attachment B.**

3.2.1.1 Costs disclosure

An example of the cumbersome regulatory requirements that legal practitioners must comply with relates to costs disclosure. The burdensome nature of current costs disclosure requirements has encouraged lawyers to rely on voluminous pro forma disclosure statements which comply with the letter rather than the spirit of the law. In some jurisdictions, a pro-forma costs disclosure can be up to 15 pages long and do little to facilitate a client's understanding of the important decisions to be made. Disparities in requirements also prevent multi-jurisdictional firms from being able to use consistent costs disclosure forms. Furthermore, in August 2009 the consumer group Choice investigated legal billing in Australia, and found that a 'surprising number' of lawyers do not issue costs disclosures at all, although required to do so under the current regulatory framework.

Legal services can be significant expenses for consumers, and it is important that they have as full an understanding as possible of the costs and outcomes involved.[3]

3.2.2 Complexity of Regulatory Framework

Each of the State and Territory regulatory systems has varying degrees of involvement by government, independent regulators, the Courts and the legal profession. Nationally, there are at least 55 individual entities charged with regulating various aspects of the legal profession or the provision of legal services at the State, Territory and Commonwealth levels. Tables of the bodies regulating the legal profession in each jurisdiction are at **Attachment C**.

3.3 Opportunities for regulatory improvement

In the process of developing proposals for a national system, a number of opportunities for regulatory improvement have been identified by the Taskforce. Some examples include ensuring that complaints handling and fidelity fund determinations occur independently of the profession, streamlining and simplifying business structure regulation, facilitating volunteering and facilitating the admission of foreign lawyers.

3.3.1 Dispute resolution and professional discipline

A Consultative Group comment identifies that the current complaint handling process operates primarily from a disciplinary perspective levelled at the conduct of lawyers. This approach arises from the historical focus of the processes being on protecting the integrity of the profession, rather than resolving disputes with consumers of services. Although most jurisdictions have forums for accepting and mediating consumer complaints, they do not provide an opportunity for the complaints handler to provide a remedy where agreement is not achieved.

This adds to costs for consumers pursuing complaints and lawyers responding to complaints, and provides no remedy in situations where a genuine complaint is nonetheless not serious enough to constitute a disciplinary matter and an agreement cannot be struck with the practitioner. It also results, in some cases,

[3] Fong, T, 'Legal billing – don't get a raw deal', *Choice* (11 August 2009).

in less serious matters being taken to the Tribunal because there is no other way of imposing disciplinary consequences or providing a remedy for consumers. At a time when sophisticated complaint handling mechanisms are available in a range of service areas, consumers have a reasonable expectation that their complaints will be managed efficiently and impartially, and that they will receive redress where appropriate.

Concerns have also been raised about the potential for conflicts of interest in jurisdictions where professional associations continue to manage and determine complaints, which reduces public confidence in the impartiality of the process.

3.3.2 International Competitiveness

Barriers to foreign lawyers entering Australia reduce both the pool of lawyers available to the Australian public and the scope for mutual recognition agreements to be negotiated to facilitate international practice of Australian lawyers.

The most pressing issue for foreign lawyers is admission to practice in Australia,[4] as once admitted, a foreign lawyer is entitled to practice subject to the same conditions as an Australian lawyer. In order to qualify for admission, foreign lawyers are often required to undertake undergraduate subjects in Australian law, regardless of their experience and the subjects' relevance to the area they want to practice in. In one example that was brought to the attention of the Taskforce, a lawyer with seven years' experience and who was admitted in Germany and the UK, was asked to undertake 13 undergraduate subjects in order to qualify for admission in Australia – the equivalent of a whole law degree.

Inconsistency between jurisdictions in the assessment processes and subsequent requirements imposed are unnecessary and create forum shopping. Presently, only New South Wales, Queensland, Victoria and Western Australia undertake the assessment of foreign qualifications on behalf of all jurisdictions. Foreign-trained lawyers admitted in a less restrictive jurisdiction are free to practice anywhere in Australia under the mutual recognition rules, creating potential for forum shopping and exploitation.[5]

The International Legal Services Advisory Council (ILSAC) has noted that restrictive entry standards discourage internationally experienced lawyers from working in Australia.[6] This is despite some qualifications, including those from the UK and India, having previously been recognised as equivalent to Australian qualifications.[7] ILSAC also notes that this restrictive position reduces scope for negotiating bilateral and multilateral trade agreements which would open key markets to Australian lawyers.[8]

3.3.3 Fidelity fund determinations

There is a perceived, if not an actual, conflict of interest in the administration of fidelity funds and the payment of claims from the funds being managed by the legal profession. Currently the funds, the investigation of claims and the decisions on claims are, in the majority of jurisdictions, made by professional associations. This has led to a perception amongst consumers that decisions on claims lack transparency and accountability and fail to satisfy expectations of impartiality.

[4] ILSAC *Background Note- Overseas qualified lawyers seeking admission to practise in Australia Assessment of qualifications* (3 November 2008).
[5] ILSAC *Admission to Practice in Australia of Overseas Qualified Lawyers* (2005) at 4.
[6] Ibid.
[7] Ibid.
[8] Ibid.

The Taskforce has received several public submissions from consumers who have had difficulties in dealing with the existing fidelity fund schemes. One submission from a Model Bill jurisdiction describes how discrepancies in a solicitor's trust account exposed during audits were reported to the relevant legal profession body on several occasions, but these discrepancies were not acted on. The solicitor later pleaded guilty to stealing clients' funds. The body that failed to detect the trust account discrepancies was the same one responsible for determining the ensuing fidelity fund claims, causing the consumer to feel that any complaints made were futile.

3.3.4 Business structures

In considering the current regulation of law practices, two key issues have been identified: the inconsistencies between the regulation of one type of law practice as opposed to another; and the limited choice legal practitioners have to determine the business structure through which they wish to provide legal services.

Under the current system, business structures that differ from the traditional partnership or sole practitioner particularly incorporated legal practices (ILPs) and multi-disciplinary partnerships (MDPs), are permitted, but are regulated disproportionately to traditional law practices. The additional regulation was introduced at a time when non-conventional business structures were a relatively new phenomenon, and so were treated with considerable caution by regulators. Regulation was aimed at resolving tensions and inconsistencies between the duties and obligations of legal service providers as members of the legal profession and the duties and obligations of, and options available to, legal service providers as business operators in a lucrative industry.

These reasons for regulation of certain law practices continue to exist to some degree. However, the existing approach has resulted in a number of inconsistencies in the regulation of law practices. For example, existing legal profession legislation provides that it is an offence for a person (whether or not an officer or employee or a partner of a law practice) to cause, induce or attempt to cause or induce a principal or an employee of an ILP or MDP to contravene legislation, regulations or other legal professional obligations.[9] While the risk of such a breach could, conceivably, be higher in an ILP or MDP, it is unclear why such action would not also constitute an offence in any law practice.

Moreover, there is nothing in existing legislation that permits lawyers to choose the business structure they wish to employ, whereas other professionals and service providers are afforded such business freedoms.

3.3.5 Overregulation

Duplication and complexity in regulation also arise from overlapping with regulation from outside the profession.

3.3.5.1 Professional indemnity insurance

The current law requires State and Territory regulators to approve each insurance scheme and/or policy to be used by law practices or practitioners. Practitioners are required to obtain professional indemnity insurance in their home jurisdiction and, generally, may only choose from approved funds in that jurisdiction.

[9] Sections 2.7.35 and 2.7.51 of the Model Bill.

Where a law practice or practitioner operates in more than one jurisdiction, they must obtain professional indemnity insurance in their home jurisdiction and exemptions from holding a separate professional indemnity insurance policy in each other jurisdiction in which they practise.

Requiring the approval of individual professional indemnity insurance policies and exemptions imposes financial and time costs on both legal service providers and regulators. Professional indemnity insurance products are often provided by Australian Prudential Regulatory Authority (APRA) approved organisations, already requiring them to meet the high quality standard required by APRA.

3.3.5.2 ADIs

One submission received by the Taskforce highlights the complexity and duplication in the current regulatory framework for trust accounts, particularly the issues faced by Authorised Deposit-taking Institutions (ADIs). The submission notes that each jurisdiction takes a different approach to how it approves ADIs to provide trust accounts, in some cases duplicating the role of APRA in determining the prudential standing of an ADI.

3.3.6 Legal costs

Under the current Model Bill provisions, the onus is on the client to demonstrate that a costs agreement or the scale of costs used should be set aside for overcharging, or to seek a costs assessment to ensure that the legal costs charged reflect reasonable value. Under the Model Bill approach, legal costs are only recoverable where there is a complying costs agreement, and are charged in accordance with an applicable scale of costs or costs determination or, where there is no costs agreement or scale of costs, are charged according to the reasonable value of the legal services provided.

This onus is particularly difficult for clients as legal services are difficult to value and lawyers have a considerably better understanding of what legal services are worth than their clients. This information asymmetry places clients at risk of exploitation, particularly those who lack experience in using legal services.

3.4 Areas of legal profession regulation not perceived to be a problem

3.4.1 Areas of legal profession regulation

The Taskforce proposals do not extend legal profession regulation beyond the areas already covered in State and Territory provisions.

3.4.2 Continued involvement of the profession

The current model of legal profession regulation is co-regulatory, with each State and Territory having a slightly different balance between professional and government regulation. In this approach, the legal profession, Government and the Courts work together to achieve a national legal market that carries the highest ethical standards and instils consumer confidence. Co-regulation draws upon the expertise of the profession and the courts and combines these with government accountability, scrutiny and authority to ensure appropriate checks and balances are in place without undermining the independence of the profession and the professions' important role in regulation.

The Taskforce endorses a co-regulatory approach and for the most part does not perceive it as a 'problem' to be resolved by the current regulation, although some adjustments will be required to create uniformity.

This is with the exception of two particular areas noted above where self-regulation in some jurisdictions may create perceptions of bias: complaints and the determination of fidelity fund claims.

3.4.3 Areas which uniformity is not currently appropriate

Although uniformity in as many areas as possible is desirable to reduce compliance burdens and to promote seamless national practice, in some areas uniformity is not currently appropriate. In these areas uniformity would require substantial reorganisation at a State and Territory level and/or would be difficult to achieve equitably. These areas are therefore not seen as problematic in the short term, although a transition to uniformity in the longer term may be desirable.

3.4.3.1 Fidelity funds

Fidelity funds have been maintained in each jurisdiction for many years. Practitioners contribute to their local fund, which is drawn on to provide clients compensation where their trust money has been stolen. The funds in each jurisdiction have been administered differently over the years, with the result that the amount held in the funds differs across jurisdictions. Although a national fund would be ideal in the longer term to facilitate equitable national practice and consistent outcomes for consumers, this would require considerable negotiation between States and Territories to ensure a fair outcome is achieved. Accordingly, this is has not been attempted within the Taskforce's 12 month timeframe for proposing reform.

3.4.3.2 Costs Assessment

Each jurisdiction has its own established systems for assessing costs, and these vary markedly across jurisdictions. Costs assessments are closely linked to the work of the courts and in many jurisdictions are governed by court rules and regulation other than the Legal Profession Acts. Reform in this area would be a substantial undertaking and is not attempted within the Taskforce's 12 month timeframe for the reform.

The exception to this relates to small costs disputes, which could be handled more efficiently if they were able to be mediated and determined by the complaints handler. A small jurisdiction for the complaints handler in this area could operate in conjunction with existing mechanisms for costs assessment.

3.4.3.3 Fees

The Taskforce intends that the organisation and funding of the bodies which will carry out most of the regulatory work will continue to be handled at a State and Territory level. Therefore although a national approach to fees would reduce competition barriers and the potential for forum shopping, States and Territories will need to ensure that they are able to generate sufficient funds to maintain their regulatory system, and to set fees accordingly. A central component of a practising certificate may be levied to contribute to the national system, however States and Territories need to continue to determine other fees. The ACIL Tasman analysis suggests that there will not be significantly increased regulatory costs that would necessitate a significant increase in fees.

4 Objectives

4.1 Project Objectives – 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 a truly seamless national legal services market.

Efficient and effective national legal profession regulation should:

- Promote uniformity
- Build on best practice in existing legal profession regulation
- Simplify regulation to minimise compliance burdens on legal practitioners and law practices
- Continue to involve the legal profession in its own regulation through a co-regulatory model and retain the significant expertise in existing regulatory bodies
- Provide strong consumer protection
- Be internationally competitive
- Facilitate pro bono and the work of community legal centres, and
- Provide a regulatory structure that is flexible enough to keep up to date with developments in regulation and the sector and adopt best practice on a continual basis.

It is important that regulation is targeted, proportionate and based on risk assessment to enable it to protect consumers without imposing unnecessary burdens on providers. Risk-based regulation means identifying and assessing the risk, determining the strategy for managing the risk and communicating it effectively.

Regulators should be able to justify their activities on the basis of risk and communicate this effectively. Good regulators use the full range of tools at their disposal, such as providing advice and education to facilitate better compliance as well as a proportionate response to non-compliance.

4.2 COAG Seamless National Economy Objectives

In March 2008, the Council of Australian Governments (COAG) endorsed a far-reaching reform agenda, overseen by the Business Regulation and Competition Working Group (BRCWG), for reducing the costs of regulation and enhancing productivity and workforce mobility in areas of shared Commonwealth, State and Territory responsibility.[10]

In July 2008, COAG agreed that the seamless national economy initiatives were amongst the most significant and far-reaching of the potential reforms identified by COAG.

The COAG reform agenda is intended to deliver more consistent regulation across jurisdictions and address unnecessary or poorly designed regulation, to reduce excessive compliance costs on business, restrictions on competition and distortions in the allocation of resources in the economy.

[10] Council of Australian Governments *National partnership Agreement to Deliver a Seamless National Economy* (2008).

Objectives

Through the Agreement, the Parties committed to:

a) continuing to reduce the level of unnecessary regulation and inconsistent regulation across jurisdictions
b) delivering agreed COAG deregulation and competition priorities, and
c) improving processes for regulation making and review.

Outcomes

The Agreement will contribute to the following outcomes:

a) creating a seamless national economy, reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions
b) enhancing Australia's longer-term growth, improving workforce participation and overall labour mobility, and
c) expanding Australia's productive capacity over the medium-term through competition reform, enabling stronger economic growth.

Subsequent to this agreement and consistent with its broader microeconomic reform agenda, on 30 April 2009 COAG endorsed a series of reforms recommended by the BRCWG, including an agreement to set up a taskforce on reform of the regulation of the legal profession, with the objective of uniform laws across Australian jurisdictions.

4.3 Broader COAG Objectives

The role of COAG is to initiate, develop and monitor the implementation of policy reforms that are of national significance and which require cooperative action by Australian governments.[11]

An important development occurred in this area in April 1995, when COAG agreed to implement the *National Competition Policy* and related reforms. The *National Competition Policy* provided financial incentives for States and Territories to reduce barriers to competition over several years, with the goal of uniform protection of consumer and business rights and increased competition in all jurisdictions.

The Council reaffirmed its commitment to continuing microeconomic reforms in key industries, and this was reflected in a third Agreement which also provides for financial arrangements, including a series of competition payments to the States and Territories for reaching key reform goals.

The competition payments ceased in 2005-06, with the total amount paid approximating $5 billion. The scheme was abolished by mutual agreement with the signing of the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*.

The *National Competition Policy* was successful in advancing COAG's broader microeconomic reform agenda, benefiting consumers and, through improvements in market efficiency, improving Australia's overall international competitiveness.

Reforms introduced under the National Competition Policy framework continue to benefit the economy, with the Productivity Commission observing that productivity and price changes in key infrastructure sectors

[11] COAG website *About COAG*: http://coag.gov.au/about_coag/index.cfm.

in the 1990s, to which National Competition Policy and related reforms have directly contributed, have increased GDP by 2.5 per cent or $20 billion[12].

The creation of a national legal profession is expected to lower barriers to entry for lawyers and firms wishing to establish or expand multi-jurisdictional practices. Further, the removal of the existing regulatory disjunction would reduce the cost burden on existing multi-jurisdictional practices. These reforms are expected to increase competition on a national scale. A uniform national Australian market would also be more attractive to international firms. Indeed, after the national German legal profession was established, a number of foreign firms entered the market, which had the effect of increasing competition.

Australian competition policy is based on the principle that competitive markets are the most effective means of generating economic growth. Well-functioning competitive markets provide incentives for greater efficiency, productivity and innovation.

[12] Productivity Commission, *Review of National Competition Policy Reforms*, Final Report, 2005, Canberra.

5 Options

5.1 Options for package to govern the legal profession

In line with COAG's request to produce a draft Legal Profession National Law within 12 months, the Taskforce has developed a detailed package of legislation and National Rules as an option for consideration. The Taskforce is releasing the package for a consultation period of three months, and is open to feedback on all elements of the proposals set out in the legislation and National Rules.

As there is no other complete option for nationally uniform legal profession regulation, the other option considered is maintaining the status quo.

5.1.1 Option 1: Taskforce developed National Law and National Rules

The National Law developed by the Taskforce aims to address the problems and meet the objectives outlined above. It proposes a nationally uniform, simpler and more effective system of legal profession regulation. In meeting COAG's request for a draft uniform Legal Profession National Law, the Taskforce has undertaken an extensive review of the existing provisions in States and Territories, and has aimed to identify and propose best practice approaches. The Taskforce has also used the opportunity to propose new approaches in key areas to streamline, simplify and improve the regulation of the legal profession.

The process of developing the draft legislation and National Rules has benefited from the expertise of Taskforce members and officers from the Commonwealth, New South Wales, Victorian and Australian Capital Territory Governments, and from the Law Council of Australia. The Taskforce has also had the benefit of views of the Consultative Group, which includes members from a broad range of stakeholder types and from all jurisdictions, and of targeted ad hoc consultation in specific areas of reform.

5.1.1.1 Selection of best practice

In developing its proposals, the Taskforce has considered the current regulatory requirements in each jurisdiction and has sought to select the best practice approach. One example where best practice was identified was in the approach of some jurisdictions in allowing low or no cost practising certificates for lawyers who wished to practise only as volunteers at community legal services, and in ensuring all practising certificates allow volunteer practice. These provisions have been included in the Taskforce's package. Another example is provisions that allow foreign lawyers' academic qualifications and legal skills or experience to be assessed to determine whether they are sufficient for admission, whether or not they were obtained in Australia.

5.1.1.2 Simplification

As identified in the problem section, many areas of legal profession regulation are highly complex. In its development of the legislation, the Taskforce has considered ways in which the regulation of the legal profession may be simplified. This is intended to make legal profession regulation more accessible to legal service providers and consumers alike. This has occurred at both a structural level regarding the organisation of provisions, and at the level of the sections where in many cases the Model Bill or other jurisdictional provisions have been retained but the language simplified.

5.1.1.3 Deregulation

The Taskforce has also sought to identify areas where overly prescriptive requirements or processes could be eliminated. Examples of this include:

- no longer requiring ADIs to be approved by the national regulator if they are approved by the Australian Prudential Regulatory Authority and comply with the National Law and Rules
- removing the unnecessary additional regulation for different types of law practices
- removing offences which are more appropriately dealt with as disciplinary matters
- recommending civil penalties for conduct that is less serious or regulatory in nature and would be appropriate for enforcement via the more efficient processes associated with civil proceedings (as prosecuting a civil penalty is less onerous for the complaints handler than establishing the breach of a criminal offence), and
- reducing advertising regulation which is also covered by trade practices law.

5.1.1.4 Innovation

In a few areas, the Taskforce identified areas where there was scope for improvement on the systems operating the jurisdictions. Some of these are discussed below, including a power of the complaints handler to provide remedies in consumer complaints and conditional admission for foreign lawyers.

5.1.1.5 Consultation feedback

Submissions to the Taskforce and ad hoc consultation have assisted the development of Taskforce proposals. This has assisted the Taskforce in selecting best practice and developing the law.

5.1.1.6 Options within this option and further consultation

The options regarding the major proposals of the Taskforce are set out below. However in creating a national system of legal profession regulation in an area as complex as regulation of the legal profession, an infinite number of options exist about the detail of the proposals. The detailed options the Taskforce has proposed are set out in the legislation package, and although they are not all explicitly discussed here, the Taskforce welcomes feedback on any aspect of its proposals. The Taskforce will take this feedback into account when it presents its final package of legislation and National Rules to COAG.

5.1.2 Option 2: Status quo

Keeping the status quo would see States and Territories continuing to rely on their own systems of legislation and subordinate instruments for regulation of the legal profession regulation. There would be no uniform national regulation and the opportunities identified for simplification, expansion of best practice and innovations for more effective regulation would not be realised.

5.2 Options for areas where major change is proposed

This section sets out options for key changes presented in the Taskforce's proposed Bill.

5.2.1 National practice options

5.2.1.1 Option 1: National admissions processing, practising certificates and register

Under this option, the requirements for applicants seeking admission around the country would be identical and the assessment of applicants for admission would be centralised. Once assessed and found to be eligible, applicants would obtain a compliance certificate to be given to a Supreme Court. Supreme Courts would retain their inherent jurisdiction to refuse an admission. Once admitted, lawyers would become

officers of every Supreme Court around the country for as long as their name remains on any Supreme Court roll. Central processing would create regulatory efficiencies.

Practising certificates would be for national practice, automatically entitling the holder to practise around the country. Rather than disparate types of practising certificates around the country, there would be one set of standard practising certificate conditions. This would include practising certificate conditions appropriate for government and in-house lawyers, barristers, and lawyers with supervision requirements.

Practising certificates would however still be issued in a 'home jurisdiction' where the practitioner expects to perform the majority of their work. This function would be devolved from the Board to be handled at a local level by professional associations or other bodies as determined by the jurisdictions. The specification of a 'home jurisdiction' would determine which State or Territory the lawyer belongs to for professional indemnity insurance and fidelity fund contributions.

An Australian Legal Profession Register would be a central repository of information regarding lawyers' admissions, practising entitlements and any disciplinary matters. This would be a source of important information for regulators and courts across the country. It would also be publicly accessible on the Board's website, allowing consumers to access information about their legal service providers. Notifications from incorporated legal practices and multi-disciplinary practices would also be made and records maintained centrally, reducing inefficiencies for regulators and practices.

This approach will allow a consistent approach to admissions and practising certificates across the country to the greatest extent possible. Information being housed at a national level would create efficiencies for regulators and Courts, and ensure that important information is available to them. It would also create a better sense of a national legal profession.

5.2.1.2 Option 2: Continued status quo approach

Under the status quo option, admissions would continue to be processed at a State and Territory level. Practising certificates would be issued at a State and Territory level and practising certificate types would continue to vary from jurisdiction to jurisdiction.

A national register of lawyers could be maintained, although regulators and Courts would still need to be aware of the jurisdictional differences in practising certificate entitlements. There would be no new benefits of efficiency from centralisation of administrative functions or of increasing the sense of a national legal profession.

5.2.2 Options for legal costs – cost disclosures and agreements

5.2.2.1 Option 1: Informed consent

Under this option, legal practitioners and law practices would be required to take reasonable steps to ensure that the client gives informed consent to legal costs. This would include ensuring clients understand the basis on which legal costs will be charged, how the initial estimate was calculated, factors likely to alter the estimated legal costs and their rights in relation to legal costs. The onus would be on lawyers to exercise their professional judgement regarding the level of detail needed by a client to understand the options available and costs involved. In some situations, this may reduce the information required to be provided by lawyers to their clients, in other situations more information may be required. An exemption could be introduced with respect to commercial or experienced consumers who do not need high levels of cost disclosure.

This option would ensure clients are able to properly make decisions about engaging a lawyer and the progress of their cases. It could also facilitate better practitioner-client relationships and promote good business practice.

5.2.2.2 Option 2: Improved pro-forma

The second option to improve regulation of legal costs is to develop an improved, standard pro-forma.

The NSW Legal Fees Review Panel, in its 2005 report, proposed the adoption of a standard form of costs disclosure, similar to a document currently used under the Model Bill in relation to a client's right to challenge legal costs. Under this option, the standard form would be approved by the National Legal Services Board. The Board could consider several pro-forma forms, each dealing with a specific area of law, such as conveyancing or family law.

Using an improved standard form of costs disclosure could increase accessibility and transparency of legal costs by allowing retail clients to more easily compare the legal services available to them. It could also be more easily translated into languages other than English, further increasing accessibility for clients and reducing costs burdens for practitioners. A standard pro-forma could offer practitioners increased guidance, but would not easily take into account clients' varying needs to be able to make an informed decision.

A standard, improved pro-forma would also not address the issue of clients' understanding of what the costs disclosure document contains, including the basis on which legal costs will be charged.

Even an improved standard pro-forma may still not be sufficient to ensure every client will understand a costs agreement. A pro-forma approach to legal costs also runs the risk of allowing practitioners to become complacent and not tailor a costs disclosure and agreement to a client's needs or to take the extra step of ensuring the client fully understands what the costs agreement entails.

5.2.2.3 Option 3: Continued diverse jurisdictional requirements

The third option would be to retain the status quo in relation to costs agreements of different and often voluminous requirements. This would not address the problems identified.

5.2.3 Options for legal costs – charging

5.2.3.1 Option 1: Obligation to charge no more than fair and reasonable costs

Under this option, lawyers could be obliged under the legislation to not charge any more than costs that are fair and reasonable. The calculation of what is fair and reasonable could take into account a range of factors, including the practitioner's skill and experience and the importance and complexity of the matter. Breach of this obligation would be capable of having disciplinary consequences.

Placing this obligation on law practices could create better protection for consumers, as even where consumers do not have the ability to judge what is a fair and reasonable price for legal services, lawyers would be obliged to ensure that they do not take advantage of this information asymmetry. The introduction of a requirement to charge no more than fair and reasonable costs could also encourage lawyers not to work in a manner which unnecessarily increases the legal costs.

Government and commercial clients would be able to contract out of this protection.

5.2.3.2 Option 2: Continue the status quo approach

Under the status quo option, continuing the Model Bill approach, the onus would continue to be placed on the client to demonstrate that a costs agreement or the scale of costs used should be set aside for overcharging, or to seek a costs assessment to ensure that the legal costs charged reflect reasonable value. Disciplinary consequences would only flow where there has been 'gross' overcharging.

This approach would do nothing to address the problem of potential exploitation of clients' lack of knowledge about what is a reasonable amount to pay for legal services.

5.2.4 Options for dispute resolution

5.2.4.1 Option 1: Increased powers of complaints handler

Under this option, the complaints handler would have increased and nationally uniform powers that would allow complaints to be handled quickly and efficiently for consumers, practitioners and the regulator alike.

These would include:

- A power to facilitate resolution by agreement between the parties for all matters arising from complaints which raise a consumer concern with a lawyer or law practice which provided them with legal services
- A power to provide a remedy for consumers where an agreement is not reached, including an order for an apology, an order to redo the work, and an order for compensation up to $25,000
- A power to facilitate resolution of costs disputes where the value of the work in question is less than $100,000 and to make binding determinations where the value of the work is less than $10,000
- A power to make a finding of unsatisfactory professional conduct in less serious matters, and
- A power to prosecute more serious unsatisfactory professional conduct or professional misconduct in the jurisdictional disciplinary Tribunal (this could occur separately from the resolution of the consumer's matter, or alternatively, the complaints handler or the consumer could represent the consumer's concern in the Tribunal, with a maximum compensation order of $25,000 available).

The complaints handler would have obligations to deal with all complaints in accordance with the law and rules, exercise its discretions fairly, deal with complaints efficiently and expeditiously and to ensure appropriate procedural fairness is afforded to the parties.

A central point of contact for the complaints handler would facilitate the making of complaints. This would include a national website and telephone number.

Complaints would also be required to be handled independently of the profession to ensure consumer confidence in the system. As is currently the case in Victoria and Queensland, professional associations may be involved in investigations and make recommendations where they are asked to, but the complaints handler would be the ultimate decision-maker.

This option would facilitate the early and efficient resolution of consumers' concerns with their legal service providers, as well as continuing to provide avenues for professional discipline where appropriate. Less serious unsatisfactory professional conduct matters could also be resolved more expeditiously.

5.2.4.2 Option 2: Complaints stream and limited powers

Under this second option, the complaints handler would have uniform national powers to assist parties to come to agreement regarding consumer concerns, but would not have a power to determine the matters. The complaints handler would also have power to prosecute disciplinary matters in the relevant jurisdictional Tribunals, but no power to determine less serious matters. Costs assessment could be left to the current jurisdictional processes.

This would allow the national body to oversee a national framework for dealing with complaints and a central point of contact for clients making complaints. It would also be more consistent with the current jurisdictional provisions. It would however create fewer opportunities for complaints handlers to resolve smaller disputes between practitioners and clients more quickly and efficiently.

5.2.4.3 Option 3: Continue status quo approach

Under the status quo option, States and Territories would be allowed to maintain their own systems of complaints handling and professional discipline. This would not allow for national oversight of the framework or a central point of contact for consumers, nor provide any additional powers to resolve consumer concerns and disciplinary matters more efficiently and effectively.

5.2.5 Options for trusts

5.2.5.1 Option 1: National trust accounts for all firms

Under this first option, all law practices receiving trust money would be required to hold national trust accounts[13], regardless of whether they practised in more than one jurisdiction. This would allow multi-jurisdictional firms to hold only one account, significantly reducing the administrative duplication involved in maintaining multiple trust accounts and in complying with multiple sets of requirements. It would also reduce barriers to single jurisdictional firms expanding their operations into a new jurisdiction by not requiring them to open a new trust account.

This model would however make it difficult to administer the distribution of trust account interest to the public purpose funds in each jurisdiction. This could be solved by a funding formula to distribute funds between jurisdictions.

5.2.5.2 Option 2: Single national trust accounts for multi-jurisdictional firms

Under this second option, single jurisdictional firms would continue to hold jurisdictional trust accounts, and multi-jurisdictional firms would be allowed to elect to hold one single multi-jurisdictional account. This would remove the significant regulatory duplication involved in maintaining multiple trust accounts and complying with multiple sets of requirements.

This model would allow interest from public purpose funds for single jurisdiction trust accounts to flow, as in the current system, straight to the appropriate public purpose fund. A funding formula would be required to distribute funds from multi-jurisdictional accounts.

5.2.5.3 Option 3: Jurisdictional trust accounts with same regulatory requirements

Under this third option, firms would continue to be required to hold a trust account in each jurisdiction in which they operate, but the regulatory requirements for maintaining them would be identical. This would

[13] In this section, the term 'trust accounts' is used to refer to general trust accounts.

still significantly simplify trust accounting for multi-jurisdictional firms through removing the need to comply with multiple sets of requirements, and would allow trust account interest to flow directly to public purpose funds without the need for a funding formula. Regulatory duplication in the requirement to hold more than one trust account would however remain, possibly including external examination requirements.

5.2.5.4 Option 4: Continued status quo approach

Under the final option, the status quo would be maintained in relation to trust accounts and jurisdictions would continue to require different trust accounts and trust accounting systems. This would allow funds to continue to flow directly into public purpose funds, but not resolve the problems identified of regulatory duplication from holding multiple trust accounts and complying with multiple trust accounting requirements.

5.2.6 Options for foreign lawyers

5.2.6.1 Option 1: Centralised system with conditional admission

Under this first option, registration of foreign lawyers wishing to practise foreign law in Australia and assessment of applications for admission of foreign lawyers wishing to practise Australian law in Australia would be handled centrally and consistently across the nation.

In addition, there would be an option of conditional admission for foreign lawyers wishing to practice Australian law which would increase their eligibility for admission. This would allow foreign lawyers who were happy to have restrictions on their admission to be more easily admitted to practice. Conditions might include limiting their practice to a time period or to certain areas of law, or with supervision or further education requirements.

This will allow foreign lawyers to more easily qualify for admission, while allowing the Board to be confident that the lawyers are qualified to provide high quality services within the restrictions imposed. For example a foreign specialist criminal advocate could have a restriction placed on their admission that allowed them only to act as a criminal advocate if this was all they wished to do. This would allow the Board to waive the usual requirements in unrelated or loosely related areas, such as trust accounting or contract law.

Conditional admission is likely to increase the quality legal services available to the Australian public from the international market. A single national system for registering lawyers will also facilitate Australia's international competitiveness through making it easier to negotiate bilateral and multilateral trade agreements which would open key markets to Australian lawyers. It would also reduce regulatory duplication and forum shopping.

5.2.6.2 Option 2: Centralised system

This second option would see the registration and admission of foreign lawyers handled centrally, but no option of conditional admission. Rather, as is the case currently, foreign lawyers would be required to meet the same standards as local applicants if they wished to be admitted, regardless of their international experience and the type of practice they wished to undertake.

The common Australian market would facilitate international competitiveness and negotiation of trade agreements, however the perception of restrictive entry standards would remain. Regulatory duplication and forum shopping would be reduced.

5.2.6.3 Option 3: Continued status quo approach

Under this option, jurisdictions would retain their current disparate systems for registering foreign lawyers. This would not create any economic benefits or regulatory efficiencies.

5.2.7 Options for fidelity fund determinations

5.2.7.1 Option 1: Determination independently of the profession

The first option would require that a determination of claim against a fidelity fund would be made independently of the profession. Having an independent process would overcome the perception that a professional body would be less likely to make an objective finding that one of its members had stolen funds, or to deplete a fund that is maintained by its members. This option may be implemented by including a legislative principle in the National Law, requiring that the determination of claims against the fidelity fund must be determined independently, at arm's length from the profession and professional associations.

This principle may be achieved in practice by ensuring that there is no professional association involvement in the determination of fidelity claims. This option would not preclude the involvement of the professional association in overseeing the administration of the fidelity fund or the ability of a State of Territory to implement its own legislation about fidelity funds, as long as the principle was complied with.

5.2.7.2 Option 2: Status quo determination by the profession

The status quo option involves determination of claims by the profession. Currently, the investigation and determination of claims against fidelity funds are the responsibility of each jurisdiction's regulatory authority. In most jurisdictions claims are determined by the relevant law societies. A consequence of this system is that, despite the expertise of the law societies in determining claims about its own profession, there is a perception by some consumers that the determination of claims by a law society creates a conflict of interest. This is premised on a perception that a professional authority, such as a law society, is less likely to make a finding that one of its members had stolen trust funds, or to deplete a fund that is maintained by its members.

5.2.8 Options for business structures – regulatory obligations

In considering the current system of regulating business structures, opportunities for regulatory improvement and simplification have surfaced. There is potential for mainstreaming requirements for law practices without distinguishing between business structures unnecessarily. Three options in particular present as alternatives for addressing the issues that relate to inconsistent levels of regulation.

5.2.8.1 Option 1: One set of requirements for all business structures

Under this first option, all law practices, regardless of business structure, would have the same obligations. The benefits of this would be that all law practices would, in a sense, be on a level playing field. However, this option would not address the tension between the professional duties and obligations of lawyers and the duties and advantages that come with incorporation, nor the implications of incorporated legal practices (ILPs) or multi-disciplinary practices (MDPs) for legal profession regulation.

5.2.8.2 Option 2: Largely uniform requirements for all business structures

Under this option, regulation would be rationalised and distilled into the fundamental obligations that fall on all lawyers and principals of law practices, regardless of the business structure of the practice. However, this would be done to the greatest extent possible while retaining the provisions that are necessary to

address the risks and tensions raised by incorporation or multi-disciplinary practice. For example, this would retain regulation relating to the interaction between legal profession obligations and corporate law obligations.

Regardless of the type of business structure, all principals of a law practice would be responsible for ensuring that all reasonable action is taken to ensure that the law practice, the lawyers within it and the legal services provided by it comply with the requirements in the subject-matter specific parts of the legislation.

This would include the expansion of the compliance audit function to all law practices. Currently, there is provision for compliance audits of ILPs only. Regulators have indicated that, coupled with guidelines and assistance, compliance audits have enabled them to place greater emphasis on risk management and prevention, rather than waiting until a contravention has occurred and then invoking disciplinary and remedial action. A study undertaken on these regulatory tools has concluded that there is a positive link between high levels of compliance and low levels of complaints, as the self-assessment process and compliance audits require ILPs to have a high level of awareness of their professional responsibilities and a high degree of transparency.[14]

Although there would be some regulatory costs involved in conducting these compliance audits, this power would be exercisable where the regulator considers it necessary, and therefore would be used in a targeted manner. The benefits of reduced complaints and contraventions would be likely to more than offset the costs for both law practices and regulators. Option 3: Continued higher level requirements for multi-disciplinary practices and incorporated legal practices

This option would see a continued higher level of regulation for ILPs and MDPs only. This would see the retention of the requirements that are currently placed on those business structures, which currently comprise 30 pages of the Model Bill.

5.2.9 Options for business structures – choice of business structure

The second key issue that has been identified is the limited choice legal practitioners have to determine the business structure through which to provide legal services. Option 1: Allow for any business structure without restriction

Under this option, there would be no restriction on the type of business structure through which practitioners would provide legal services. The benefits of this option would be to afford practitioners full freedom in determining what business structure is best for them. However, this approach would undermine those regulatory provisions that are aimed at minimising the risk of contravention of the subject-matter specific areas of regulation and ensuring that differences in business structures do not absolve lawyers of their fundamental responsibilities and liabilities.

5.2.9.1 Option 2: Maintain a level of regulation, but allow the regulator to recognise emerging business structures

Another option is to recognise those business structures that are known to pose only certain risks, and regulate those risks, but also provide an avenue for recognising emerging business structures. This could be done by allowing practitioners wishing to provide legal services through alternative business structures to

[14] Steve Mark & Tahlia Gordon 'Innovations in Regulation - Responding to a Changing Legal Services Market', 22 The Georgetown Journal of Legal Ethics 501 (2009) at 514.

submit their proposed structure to the national regulator, which would then be empowered to approve the structure. This would give the Board the opportunity to consider the regulatory implications of the non-conventional structure and ensure that the law practice complies with the obligations in the legislation.

5.2.9.2 Option 3 – Status quo approach

Under the status quo option, only business structures specified in the National Law would be eligible to provide legal services. This would ensure consumer protection and high professional standards would be maintained, but would minimise scope for innovation that may assist law practices to deliver services more effectively.

5.2.10 Options for professional indemnity insurance

4.2.8.1 Option 1: Regulatory centralisation and removing duplication in the current requirements

Under this option, professional indemnity insurance policies would not need to be approved if provided by an insurer regulated by APRA and if they otherwise complied with the National Law and Rules. These organisations would already meet APRA's high quality standard, and would be required to comply with the requirements under the National Law.

Policies from organisations which were not APRA regulated or which did not comply with the requirements in the National Law would need to be approved by the national regulator. This would allow flexibility in available policies and create efficiencies from centralisation.

Centralisation would also remove the present requirement for legal practitioners and law practices to obtain exemptions in each other jurisdiction in which they practise, reducing the regulatory burden currently associated with providing legal services in multiple jurisdictions. It would also remove the related administrative costs.

4.2.8.2 Option 2: Centralisation only of the current regulatory requirements

Under this option, all individual professional indemnity insurance schemes and individual products would still require regulatory approval, but this would be provided by the national regulator. Centralised approvals would reduce administrative inefficiencies in approving policies. Multi-jurisdictional practices and practitioners would no longer be required to seek exemptions. It would not however be as efficient as not requiring APRA accredited providers to seek approvals, as these providers already meet high quality standards.

4.2.8.3 Option 3: Maintenance of the current requirements

Maintenance of the current professional indemnity insurance requirements would mean that legal practitioners and law practices that engage in legal practise in multiple jurisdictions would continue to be required to apply for, and obtain, exemptions from the requirement to obtain professional indemnity insurance in each other jurisdiction in which they practise. State and Territory authorities would remain responsible for approving complying policies, schemes or arrangements.

5.3 Options for regulatory framework

This regulation impact statement considers the broad options for the legislative and regulatory structures which will implement the Taskforce's proposals. The Taskforce's proposals on the regulatory framework are also outlined in the draft legislation prepared for COAG.

5.3.1 Legislation structure options

The Taskforce's many proposals to simplify and improve the effectiveness of legal profession regulation could be implemented under an applied law scheme or a mirror law scheme. It is noted that a referral of powers scheme is inappropriate in these circumstances, given that the legislative implementation of the proposals is intended to occur at a State and Territory level.

Both models are capable of creating the benefits of reforms of the kind envisaged by the Taskforce if uniformity is maintained. A key question however, is which model will more effectively promote this project's central goal of enduring uniform regulation of the legal profession.

5.3.1.1 Option 1: Applied law scheme

An applied law scheme would involve a system where a 'lead jurisdiction' enacts legislation that other jurisdictions will then 'apply' as their own law. Each jurisdiction's application mechanism to give effect to the legislation may vary, particularly in relation to the effect of amendments of the legislation. Accordingly, the scheme would include effective limits (these may be non-legislative) on the modification of the law, and it is advantageous to include a means of central administration and enforcement of the law to promote a substantial degree of uniformity.

The major advantage of an applied law scheme is that it would provide the greatest prospect of achieving lasting uniformity across jurisdictions, provided the scheme is underpinned by an intergovernmental agreement and allows for the central administration and application of that law.

The intergovernmental agreement would require any proposed amendments to the legislation in the lead jurisdiction to be implemented only if all of the parties to the agreement, through the Standing Committee of Attorneys-General, support the proposals. The Committee would essentially need to agree to give effect to the amendments by continuing to apply the law in the lead jurisdiction. The uniformity of an applied law scheme may be compromised if there is any capacity for a non-lead jurisdiction to amend the application of the law in its jurisdiction. To overcome this issue, an intergovernmental agreement would be used to implement a transparent and uniform process for amendments to the legislation in the lead jurisdiction.

This approach would require a concession of parliamentary scrutiny by non-host jurisdictions, but would make the regime more likely to achieve the important goal of uniformity. The Ministerial Council scrutiny process would minimise the concession of parliamentary processes made by non-lead jurisdictions. This process would enable each Minister to advocate the view of his or her jurisdiction about the proposals and in turn to be accountable to his or her parliament.

A recent example of an applied law scheme is the Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions. Queensland was the promulgating State of the 'lead legislation', which was adopted and applied (as amended from time to time) by other participating jurisdictions.

5.3.1.2 Option 2: Mirror law scheme

A mirror law scheme would involve a system where one jurisdiction enacts a law, which is then enacted in the same or similar terms by other jurisdictions. This is distinct from an applied law scheme, as it would require each jurisdiction to enact independent legislation, as opposed to merely applying the legislation of the lead jurisdiction.

The advantage of a mirror law scheme is that it would enable each jurisdiction to retain its independence while following uniform principles. The major disadvantage of a mirror law scheme is the increased likelihood of inconsistency, both at the time of enactment and subsequently as laws are amended. Usually there are mechanisms agreed to between executive governments that are aimed at maintaining consistency, however this can be difficult to achieve in the longer term. For example, legislation can take time to proceed through State parliaments and can be amended in 'upper chambers'. Additionally, as governments change, so can the priority accorded to various schemes.

The experience of past mirror law schemes demonstrates that some non-uniformity has been accepted in negotiating schemes in order for all States and Territories to reach final agreement. One such difference allows a State or Territory to enact a provision that has substantially the same meaning but uses different words. Another difference may allow a jurisdiction to avoid the provision entirely, or to add something quite different. Further, unlike an applied law scheme, the mirror law scheme would limit the ability of a lead jurisdiction to create national bodies, which would have powers to oversee the application of the regime in participating jurisdictions. This is far from ideal where the object is a nationally uniform scheme.

However, the harmonisation of laws through mirror State and Territory legislation has provided an adequate solution in some cases. The 2005 uniform defamation laws is an example where long-standing concerns about jurisdictional differences, in an area increasingly dominated by national media organisations, were successfully addressed.

The Model Bill which currently guides the regulation of the Australian legal profession is a mirror law scheme. While the Model Bill has brought Australian jurisdictions some way towards uniformity, there is a variation in a number of areas which create inconsistency and microeconomic inefficiencies. This is partly a result of inconsistent implementation and amendments by jurisdictions.

5.3.2 National Bodies

In order to achieve the objective of seamless national regulation that is efficient and effective, it will be desirable to set up a new regulatory framework which will promote uniformity through national oversight. National regulatory bodies and approaches are needed. The following discusses the structure of the proposed regulatory bodies: the National Legal Services Board, which will be the national regulator , and the National Legal Services Ombudsman, which will perform compliance and complaints-handling functions.

In any of the proposed models for the structure of the Ombudsman or Board, it is intended that some operational functions may be performed by the professional associations. This would draw on their extensive knowledge and expertise in various aspects of regulation.

The current co-regulatory balance would also be maintained through professional associations continuing as vibrant membership bodies, being involved in maintaining and raising professional standards, providing education and accreditation programs and engaging in policy and reform debates that benefit the wider community. Part of this role would be achieved through their responsibility for the development of the legal profession rules, which would be subject to the Board's approval.

The professional associations would also continue to contribute to law reform, represent the profession and serve the community through relationships, products, events, information and services that engage, inform and educate consumers and other stakeholders about the profession, the legal system and their rights as consumers of legal services.

5.3.2.1 Structure of the National Legal Services Board: the national regulator

To achieve substantive and ongoing uniformity, the new regulatory framework would include a single national regulator: a National Legal Services Board.

Two options are presented below for a national body to oversee the new system and propose National Rules (subordinate legislation). Their work would include determining applications for admission and registration as an Australian-registered foreign lawyer and approval of professional indemnity insurance products. The National Board would also maintain a national register of admissions, practising certificates, disciplinary orders and registrations of foreign lawyers.

Under both options, the Board would approve and make the National Rules, the subordinate instrument to the National Law. These Rules include technical provisions to complement the National Law, including in the areas of admissions, practising entitlements, and business practice. They will also include professional conduct rules. Changes to the National Rules would be proposed by the Board, and be subject to being disallowed by the Standing Committee of Attorneys-General.

The Board could comprise a small membership with expertise from the small and large jurisdictions, the legal profession, consumers, regulators and the Courts. Maintaining and developing the Rules would be informed by subject-specific advisory committees comprising representatives from the relevant stakeholder groups, including the professional bodies, the Courts, education institutions, consumers and the Australian Governments.

5.3.2.1.1 Option 1: National body

The first option is for the States and Territories to establish a single, national body that oversees the system.

This option would achieve the main objective of these reforms—ongoing uniformity and a seamless national legal profession. This model would not require a referral of power from the States to the Commonwealth.

5.3.2.1.2 Option 2: Commonwealth body

The second option is to establish the Board within the Commonwealth jurisdiction. It would be established as a Commonwealth body, under Commonwealth legislation. This option would provide a mechanism for ongoing uniformity.

However, the Commonwealth does not have power under the Constitution to regulate the legal profession in this way without a referral of power from the States. At least one State has already indicated it does not support such a referral.

5.3.2.2 Structure of National Legal Services Ombudsman: complaints and compliance functions

As well as having a National Board, the new system must consider the options for handling complaints and compliance functions in a nationally uniform matter. If a national body is created, it is intended that this be called a National Legal Services Ombudsman. The National Legal Services Ombudsman could be established as one of three types of bodies: a national body with centralised functions, a central body with local delegates or as an overseer to promote uniformity with functions devolved to the local levels. Alternatively, these functions could be left with existing State and Territory bodies without a National Legal Services Ombudsman.

In any model, existing State and Territory Courts and Tribunals would review decisions where appropriate, and would determine some disciplinary matters. Any divergence in decisions between jurisdictional Courts and Tribunals is likely to be minimised by the clear enunciation of regulatory principles in the mirror/applied legislation and unambiguous approaches for the implementation of these principles.

5.3.2.2.1 Option 1: Centralised functions

One option would be a single national Ombudsman to take over complaints and compliance functions nationally. This body would be jointly set up by the States and Territories and be accountable to the Standing Committee of Attorneys-General. It might choose to have offices in each State and Territory, but these would be part of the national structure.

This option would be the best for ensuring continuing uniformity and would create cost efficiencies from centralisation. However, consultation has suggested that it is important that complaints and compliance functions continue to be handled at a local level. For example, one submission noted that the legal services environment in the Northern Territory is unique and suggested a local regulator would have a better understanding of local practitioners and the issues they faced. It was also noted that a local regulator would be better able to liaise and take action as required through local Courts and Tribunals. Although it might be possible to provide local offices of the Ombudsman under this structure, this may disrupt the existing regulatory services, and have the least ability to draw on the existing expertise of these bodies.

As current funding flows for regulating the legal profession are located at the State and Territory level, this model would also require detailed consideration and agreements regarding new accountability and funding structures. States and Territories would also have less say in the structure of regulatory bodies which were established in their own jurisdictions.

As legal practitioners are officers of State or Territory Supreme Courts, having a Commonwealth body undertake disciplinary functions gives rise to Constitutional issues concerning potential interference with the integrity of State governments.

5.3.2.2.2 Option 2: Central body with delegates

The second option would be to have a central body which would delegate functions back to State and Territory bodies. In this model the Ombudsman would have discretion as to which bodies were delegated which functions, but would be accountable to the Standing Committee of Attorneys-General.

This would allow the Ombudsman flexibility to handle complaints in the manner thought to be most efficient and to review and restructure delegations. It might also allow some functions to be centralised for efficiency, for example, consumer complaints that are easily resolved over the telephone could be managed centrally with complex matters triaged to the appropriate local bodies. Existing local bodies could act as delegates, which would reduce disruption and allow local expertise to be maintained.

A central first port of call would also promote the 'one stop shop' for consumers, however it may lead to some double handling and duplication of work.

This model would however create uncertainty for local bodies in relation to their delegations. States and Territories would have a medium level of control through accountability for the funding they provided to the delegates in their jurisdictions, but the Ombudsman would have discretion to revoke delegations and to choose which matters were given to local bodies.

5.3.2.2.3 Option 3: Overseer of devolved functions

The third option would be for a National Ombudsman to function as an overseer of devolved functions to promote uniformity. In this model, a schedule would be included in the National Law of the local representatives in each State and Territory.

For simplicity, each State and Territory could have one body that is the local representative and exercises all of the operational functions of the Ombudsman. The local representative would be given the authority to delegate functions to other local regulatory bodies in their State or Territory. This would give the States and Territories maximum control over the local regulatory structure maintained in each jurisdiction and would leave any consolidation of bodies and funding decisions in State and Territory hands. It would also promote certainty for local representatives.

Although complaints would go directly to different bodies, a national contact point for consumers, including a national telephone number which would automatically divert to the local representative of the Ombudsman, could be established. This would minimise any double handling and allow the size of the national body to be minimised.

Under this Model, the Ombudsman would collect data and monitor the implementation of the new law and would have the power to 'call-in' matters if it considered it appropriate to do so. This would allow the Ombudsman to deal with a particular matter where it was of national significance, created a potential local conflict of interest is detected or local representatives were not performing regulatory functions in accordance with the national regime. Under this option the National Law would need to be amended for changes to the local representatives to be made.

5.3.2.2.4 Option 4: No Ombudsman

The final option is to provide for the National Legal Services Board to make Rules but to have no national body to undertake compliance and complaints functions, but rather to leave these functions with existing State and Territory bodies, to be performed in accordance with the National Law and Rules.

This model would provide for uniform standards and would necessitate minimal structural and funding changes to existing regulatory arrangements. However, unlike the other options, there would be no oversight mechanism to promote ongoing national uniformity and significant benefits to consumers in

consistency and oversight would not eventuate. There would also be no central body to collect data, produce guidelines and monitor the implementation of the new system, which would compromise the ability for regulation to be responsive, targeted and efficient. This model may also create less incentive to review and consolidate existing regulatory bodies.

6 Consultation

Given the range of perspectives to be considered and interests to be taken into account in the national reform of the legal profession, thorough consultation has been, and continues to be, integral to the success of this project.

Consultation to date has been primarily managed through:

- the composition and operation of the Consultative Group and their regular contact with 'constituencies', comments on papers provided by the Taskforce and meetings
- public submissions
- release of discussion papers for Consultative Group and public comment
- regular reports to the Standing Committee of Attorneys-General (SCAG)
- members of the Taskforce contributing to relevant journals and newsletters
- members of the Taskforce meeting with Attorneys-General, justice departments and professional associations to discuss the reforms
- 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
- media releases at appropriate points, and
- a website.

6.1 Taskforce and Consultative Group

The members of the Taskforce and Consultative Group are drawn from diverse backgrounds, in order to maximise the expertise available throughout the process.

The Taskforce includes:

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

The Consultative Group includes:

- 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
- 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 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, Law Society of Western Australia, and
- The Hon Justice Murray Tobias AM RFD, Supreme Court of New South Wales.

The Consultative Group provides key stakeholders with a forum for providing input on the development of the draft legislation. 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 Consultative Group met several times throughout 2009 and has provided comments and written responses to the Taskforce's proposals and identified issues for further discussion.

Members of the Law Societies and Bar Associations have been heavily involved throughout the process. Consultative Group members include State and Territory Law Society members. Input has been sought from these groups on an ongoing basis through the Consultative Group, and will continue throughout the proposed public consultation process.

6.2 Targeted Consultation

The Taskforce has also engaged with key stakeholders to keep them informed of the reforms, including professional associations, Attorneys-General and the National Justice CEOs. Officers supporting the

Taskforce have also consulted relevant stakeholders on an ad hoc basis to assist with the development of proposals.

6.3 Public Submissions

In addition to inviting comment generally, the Taskforce has released seven proposal papers as part of the consultation process and welcomed public submissions on these. These papers cover the regulatory framework, a National Ombudsman, client costs, trust accounts, business structures, professional indemnity insurance and fidelity cover.

To date 93 submissions have been received from a range of stakeholders including consumers, academics, lawyers, judges, regulators and members of the Consultative Group. These submissions have been invaluable in the development of the proposed recommendations and draft legislation and, more broadly, in the determination of the policy direction and parameters of the project.

6.4 Stakeholders

The range of stakeholders in the legal profession is very broad. The 'legal profession' encompasses:

- Private solicitors
- Members of the independent or referral bars
- Advocates who work for law firms
- Legal practitioners working within community legal centres and other community services
- Lawyers engaged as employees or consultants within private corporations and the public sector, and
- Academic lawyers.

Other stakeholders include governments, businesses and individuals who engage legal services.

The means of delivering legal services to Australian consumers are equally diverse. For example, the provision of legal services to the Australian market can take any of the following forms:

- Single practitioners or small firms serving local markets
- Full service national law firms, serving consumers within local markets, State and
- Territory markets, the Australian market and international markets
- 'Boutique' firms serving consumers in particular specialty areas of law, across jurisdictions
- Community legal centres and pro bono referral services
- Emerging multi-disciplinary practices operating within State markets and across jurisdictions
- Law firms associated with international accounting practices and operating in multiple Australian jurisdictions, and
- Australian officers of international firms operating across jurisdictions.

In addition, the diverse nature of the Australian legal profession is reflected in the market for these legal services. Consumers of legal services can vary widely in their requirements, sophistication, knowledge of the law and legal services, market power and ability to negotiate a market price for legal services.

6.5 Further consultation

Given the encouraging comments and responses received to date, the Taskforce considers that this project would benefit considerably from the release of the draft National Law and National Rules for public consultation, together with this consultation Regulation Impact Statement and explanatory consultation document, and proposes a consultation period of three months.

This consultation period will facilitate the finalisation of the National Law, National Rules (and associated documentation) and intergovernmental agreement and will increase the efficiency and effectiveness with which the national reform can be implemented.

The consultation document will facilitate comment on the detail of the policy proposals through explaining the Taskforce's intentions and asking stakeholders targeted questions about the proposals. This document will also include questions for stakeholders to facilitate consultation on the detailed policy proposals. These questions will seek comment on specific issues, for example, the composition of the National Legal Services Board, practical implications arising from allowing multi-jurisdictional practices to operate a single trust account and consideration of the appropriate penalties for offences in the proposed legislation. They will also seek stakeholder feedback on whether the draft legislation and rules will facilitate the stated policy goals.

7 Impact analysis

Implementing the Taskforce's proposed package of legislation and national rules would address many of the problems identified in legal profession regulation, including complexity and absence of uniformity. An effective uniform system of legal profession legislation and National Rules will create direct benefits to providers of legal services as well as benefits to the broader economy. ACIL Tasman has undertaken a detailed analysis of the Taskforce's proposals, which is at **Attachment D**.

The Taskforce is aiming for the proposals to be delivered at no additional cost to governments. The new national bodies would need to be funded, but their functions would be minimised through delegations/devolution. Centralisation of areas, including admission and the maintenance of the regulatory system, would create efficiencies that would help fund the new bodies. ACIL Tasman estimates that the total annual cost of the new National Legal Services Board, National Legal Services Ombudsman and the National Register would be around $4.9 million in the first year and $4 million in subsequent years.[15]

Nationally, there are at least 55 individual entities charged with regulating various aspects of the legal profession or the provision of legal services at the State, Territory and Commonwealth levels. Efficiency savings would flow from the creation of a single, national regulator in reducing the functions required to be performed by States and Territories. While it will be at the discretion of the States and Territories, the ability to consolidate a number of these entities at a State and Territory level also creates potential for significant cost savings.

The key benefit of the reforms will be in the cost savings for lawyers and law practices. ACIL Tasman expects the compliance costs incurred by the legal profession, especially by legal businesses that operate across multiple jurisdictions, to be considerably lower under the new regulatory framework.

The ACIL Tasman Report has also identified substantial benefits to consumers from the proposed framework:

> ...as it is designed to provide clear and accessible consumer protection, so that consumers have the same rights and remedies available to them regardless of where they live in Australia. In addition, consumers may also potentially benefit from increased competition as law practices find it easier to operate in other jurisdictions.[16]

ACIL Tasman's analysis of the National Legal Profession Reform Taskforce's proposals considered the costs and benefits of the regulatory structures and key changes proposed by the Taskforce for the regulatory system and to providers of legal services. This analysis suggests there will be significant benefits created by the Taskforce's proposals. Those proposals analysed for costs and benefits relate to:

- admissions
- practising certificates
- registration of foreign lawyers

[15] 'Cost Benefit Analysis of Proposed Reforms to National Legal Profession Regulation', ACIL Tasman, March 2010 at vii.
[16] 'Assessment of costs and funding of legal profession regulation', ACIL Tasman, December 2009 at p ix.

- the national register of lawyers
- professional indemnity insurance
- trust accounts
- business structure
- complaints handling, and
- a requirement for fair and reasonable legal costs.

A breakdown of its analysis on these points is at page 34 of their 2010 report and considers many of the options discussed.

ACIL Tasman estimates that the direct benefits of the proposed reforms to law practices, individual practitioners and regulators over a ten year period would be $163.5 million, and that the costs would be $31.5 million. This represents a net benefit of $132 million over the ten year period.[17]

ACIL Tasman's macroeconomic analysis projects that the proposed National Legal Profession Reform will increase Australian real GDP by around $23.6 million in the first year of implementation increasing to around $25.2 million by the fourth year.[18] This analysis is economy wide and considers the impacts of the reforms on other industries that may use legal services.

ACIL Tasman also identifies a number of intangible benefits of the national system which it was unable to cost. These include the benefits of increased consumer protection and confidence in the legal profession, the creation of opportunities and reduction in compliance costs.[19]

[17] ACIL Tasman, 2010 at 35.
[18] Ibid at 42.
[19] Ibid at 38-39.

8 Conclusion and recommended options

The Taskforce proposals aim to meet the Council of Australian Government's request for a nationally uniform system of legal profession regulation. Nationally uniform regulation will resolve many of the problems identified in the current system of legal profession regulation, including the costs to lawyers and practices of duplicating compliance procedures, regulatory inefficiencies and information barriers.

The National Legal Profession Reform Project has also provided opportunities to simplify and increase the effectiveness of legal profession regulation, which will have ongoing benefits for consumers and practitioners.

8.1 Package to govern the legal profession options

8.1.1 Package to govern the profession – Option 1 - Package of legislation and national rules developed by Taskforce

The Taskforce's preferred option is that the package of National Law and National Rules developed by them at the request of COAG be adopted as the regulation to govern the legal profession. This package has been developed on the basis of extensive research and consultation, and with decision makers from four jurisdictions and the peak association of practitioners. The Taskforce seeks public views on this regulatory package, and will review the package following consultation. The package will deliver not only uniform regulation, but regulation which is simplified and more effective. The ACIL Tasman report predicts that there will be considerable costs savings and economic benefits flowing from the Taskforce's proposals.

8.1.2 National practice – Option 1 – National admissions processing, practising certificates and register

The Taskforce proposes that national schemes be implemented for the admission of lawyers and the issuing of practising certificates, and the maintenance of a national register of lawyers' admissions, practising entitlements and any disciplinary matters. This approach will allow a consistent approach to admissions and practising certificates across the country to the greatest extent possible. Housing information at a national level would create efficiencies for regulators and Courts, and ensure that important information is available to them. It would also create a better sense of a national legal profession.

8.1.3 Legal costs – Disclosures and agreements – Option 1 – Informed consent

The Taskforce's preferred option is that the National Law would include an obligation on law practices to aim to obtain clients informed consent through the process of costs disclosure. This obligation on law practices would significantly enhance consumer protection by better enabling clients to properly make decisions about engaging a lawyer and the progress of their cases. It would also assist law practices in maintaining better practitioner-client relationships and exercising best practice costs disclosure.

It is also proposed that commercial or government clients would be able to contract out of this obligation, given that they may not need high levels of cost disclosure, given their greater bargaining power and familiarity with the legal system.

8.1.4 Legal costs – Charging – Option 1 – Obligation to charge no more than fair and reasonable costs

The Taskforce's preferred option is that the National Law would include an obligation on a lawyer to not charge any more costs than those that are fair and reasonable. It is proposed that the National Law provide that a breach of this obligation will be capable of having disciplinary consequences. This obligation will ensure better protection for consumers who are unable to judge what constitutes fair and reasonable costs, by placing an obligation on a lawyer to use their professional expertise to ensure that only fair and reasonable costs are charged.

It is proposed that government and commercial clients would be able to contract out of this protection.

8.1.5 Dispute resolution – Option 1 – Increased powers of complaints handler

The Taskforce's preferred option is to provide increased powers for the complaints handler to resolve complaints and conduct matters efficiently and effectively. This will provide faster and effective outcomes for consumers, practitioners and regulators alike. The independence of the complaints handler from the profession will promote consumer confidence.

8.1.6 Trusts – Option 2 – Single national trust accounts for multi-jurisdictional firms

The Taskforce's preferred option is to allow multi-jurisdictional firms to hold one single multi-jurisdictional account in their home jurisdiction. This will remove the significant regulatory duplication involved in maintaining multiple trust accounts and complying with multiple sets of requirements. A funding formula will be proposed during the consultation period, which will guide the distribution of funds from multi-jurisdictional accounts into the appropriate public purpose fund.

8.1.7 Foreign lawyers – Option 1 – Centralised system with conditional admission

The Taskforce's preferred option is central and uniform handling of the registration of foreign lawyers who wish to practise foreign law in Australia and of the assessment of admission applications of foreign lawyers wishing to practise Australian law in Australia. A single national system for registering and admitting foreign lawyers will facilitate Australia's international competitiveness by making it easier to negotiate bilateral and multilateral trade agreements. These would open key international markets to Australian lawyers. It will also reduce regulatory duplication and forum shopping by foreign lawyers.

The Taskforce also prefers the inclusion in the National Law of an option of conditional admission for foreign lawyers wishing to practice Australian law who have appropriate qualifications or experience for the area in which they wish to practice Australian law. In practice, the National Legal Services Board would impose conditions on a foreign lawyer's compliance certificate to limit the lawyer's practice, allowing the prerequisites for admission to be appropriately reduced. Conditional admission will allow increased opportunities for foreign lawyers to practice in Australia, and may increase the quality legal services available to the Australian public from the international market.

8.1.8 Fidelity fund determinations – Option 1 – Determination independently of the profession

The Taskforce's preferred option is to address any actual or perceived conflict of interest in the administration of funds and determination of claims by providing that claims against the fidelity fund must

be determined independently of the profession. The National Law would include this principle, but would not specify the detail, allowing each State and Territory to be able to free to comply with the principle as it chooses.

8.1.9 Business structures – Regulatory obligations – Option 2 – Largely uniform requirements for all business structures

The option preferred by the Taskforce is to have largely uniform requirements for all business structures. The regulation would be rationalised and aimed at:

- identifying the persons on whom the obligations fall within a law practice; clarifying those persons' responsibilities and liabilities with respect to the provision of legal services by the practice
- addressing any conflicts between those responsibilities and liabilities and obligations under other laws, and
- ensuring that consumers are clear about the types of services they will be receiving when they seek to engage a business that offers legal and non-legal services.

The fundamental obligations would apply to all law practices, regardless of business structures, and all principals of a law practice would be responsible for ensuring that all reasonable action is taken to ensure that the law practice, the lawyers within it and the legal services provided by it comply with the requirements the legislation.

This option would allow for the retention of provisions that are necessary to address the risks and tensions raised by incorporation or multi-disciplinary practice. For example, regulation requiring incorporated legal practices and multi-disciplinary partnerships to have at least one legal practitioner principal would be retained. Provisions relating to the interaction between legal profession obligations and corporate law obligations would also remain.

It is also proposed that the power to conduct a compliance audit be extended to audits of any law practice, but only if the regulator considers it necessary to conduct such an audit. This would facilitate risk management and prevention, rather than discipline and corrective action. The result would also likely be a reduction in cost, as contraventions and complaints are prevented.

8.1.10 Business structures – Choice of business structure – Option 2 – Maintain a level of regulation, but allow the regulator to recognise emerging business structures

The Taskforce's proposed option is to allow the regulator to recognise emerging business structures. This would give legal service providers flexibility to structure their businesses in a manner that they consider to be effective, but would allow consideration of any risks created by the new structure. This would facilitate competitive innovation in legal service provision, but ensure that quality standards, professional obligations and consumer protection would not be compromised.

8.1.11 Professional indemnity insurance – Option 1 – Regulatory centralisation and removing duplication in the current requirements

The Taskforce's preferred option is including provision in the National Law stating that a professional indemnity insurance policy will be a complying policy if it is authorised by APRA and complies with the National Law and Rules. These policies will meet APRA's high quality standard and additionally will be obliged comply with any requirements under the National Law.

It is also proposed to include a provision in the National Law to enable the National Legal Services Board to approve policies which are not APRA regulated or which do not comply with the National Law and Rules. These provisions will collectively allow flexibility in available policies. Efficiencies will also result from centralisation.

Additionally, there will be no requirement for legal practitioners and law practices to obtain exemptions in each other jurisdiction in which they practise. This will reduce the regulatory burden currently associated with providing legal services in multiple jurisdictions and remove the related administrative costs.

8.2 Regulatory framework options

There are several options for the structures to implement the Taskforce's proposals at a National level. The Taskforce's preferred options are those which will promote uniformity, but maintain the existing local expertise and funding structures. They are as follows:

8.2.1 Legislation structure – Option 1 – Applied law scheme

Given the challenges in achieving uniformity under a mirror law scheme, and to avoid a repeat of the return to variations between jurisdictions, it is asserted that the proposals would be best implemented under an applied law scheme. The applied law would operate differently from the Model Bill in that it would institute uniformity initially, and then include a process for any future amendments to the law to be reflected in the intergovernmental agreement between executive governments. This process for amendments would involve all jurisdictions working together to enact the same legislative changes. This system would also eradicate much of the duplication of laws and resources that would be necessary to give effect to a mirror law system.

8.2.2 Legal Services Board – Option 1 – National body

This model is preferred as a jointly established State and Territory body would promote uniformity but retain State and Territory rather than Commonwealth control. It would also be easier to achieve than a national body established by the Commonwealth, given that at least one State has indicated that it is opposed to a referral of power.

8.2.3 Legal Services Ombudsman – Option 3 - Overseer of devolved functions

The Taskforce's preferred option is for a Legal Services Ombudsman that oversees functions devolved to local representatives and has a call-in power. This would strongly promote national uniformity and allow a central point of contact for consumers, but leave maximum control of local regulatory bodies in State and Territory hands. It would also allow for the retention of the substantial expertise in existing regulatory bodies.

8.3 Questions for consultation

The Taskforce welcomes comments and views on the options outlined in this regulation impact statement, and on the detail of the proposals as outlined in the draft Legal Profession National Law and National Rules. Although a full legislative package with selected options is presented for completeness, the Taskforce is open to reviewing any of the proposals made, whether they relate to the structure or to the detail of the proposed uniform regulation.

The Taskforce is particularly interested in consultation comments on:

- The proposed package of legislation and National Rules: do stakeholders agree with the Taskforce's proposals on the legislation and National Rules?
- The proposed national bodies: do stakeholders agree with the Taskforce proposals on the proposed national bodies?
- Potential savings: do practitioners and law practices anticipate savings from the operation of the proposed scheme?
- Potential costs: do practitioners and law practices anticipate additional costs from the operation of the proposed scheme?
- Consumer protection: do consumers believe the proposals will protect their interests when purchasing legal services?
- Simplifying and deregulating: can stakeholders identify any additional areas in which legal profession regulation could be simplified or deregulated without compromising regulatory objectives?

List of Attachments

Attachment A – Table of Practising Certificate Categories and Fees

Attachment B – Table of Legal Profession Laws

Attachment C – Tables of Legal Profession Regulators

Attachment D – ACIL Tasman Report, March 2010

Attachment A – Overview of practising certificate types and fees

[NB – The following tables do not account for fidelity fund contributions, professional indemnity insurance premiums, or membership fees, which are generally payable simultaneously. Note also that the table is not a comprehensive list of all practising certificates available. Other certificates include free practising certificates for volunteers at CLCs, which are available in Queensland and Victoria.]

NSW

Fees differentiated according to type of practising certificate and length of admission

Category	**Fee**
Private practice or incorporated legal practice (admitted more than 2 years)	$270
Private practice or incorporated legal practice (admitted less than 2 years)	$200
Corporate (admitted more than 2 years)	$270
Corporate (admitted less than 2 years)	$200
Government, prescribed corporation or Community Legal Centre (admitted more than 2 years)	$270
Government, prescribed corporation or Community Legal Centre (admitted less than 2 years)	$200

Victoria

Fees differentiated according to trust account authorisation

Category	**Fee**
Practising certificate with trust account authorisation	$412
Practising certificate without trust account authorisation	$256

Queensland

Fees differentiated according to principal/non-principal status

Category	**Fee**
Principal	$352
Non-principal	$176

Tasmania

Fees differentiated according to type of practice [in 2009-10, 1 fee unit = $1.33]

Category	Fee
Principal of a law practice	754 fee units
Employee of a law practice but is not a principal	563 fee units
Barrister	289 fee units
Australian-registered foreign lawyer	289 fee units
Employee of a community legal centre	78 fee units

South Australia

Fees differentiated according to term of issue

Category	Fee
For issue or renewal of practising certificate for more than 6 months	$340; $115 levy
For issue or renewal of practising certificate for 6 months or less	$198 fee; $57 levy

Western Australia

Single standard application fee of $1000*, subject to discounts for online application, penalties for lateness etc*

ACT

Fees differentiated according to restricted/unrestricted and type of practice

Category	Fee
Unrestricted – Government or in-house lawyer	$668
Unrestricted – for a lawyer for whom it is not reasonably practicable to establish that they will practice solely or principally in the ACT, but is resident in ACT	$657
Unrestricted – general	$1070
Restricted – Government or in-house lawyer	$478
Restricted – for a lawyer for whom it is not reasonably practicable to establish that they will practice solely or principally in the ACT, but is resident in ACT	$358
Restricted – general	$687

Northern Territory

Fees differentiated according to type of certificate [until 2011, 1 revenue unit = $1]

Category	**Fee**
Unrestricted	1400 revenue units
Restricted	1260 revenue units
Complying Community Legal Centre for unrestricted certificate	100 revenue units

Attachment B – Legislative Framework: Acts and Regulations

The following table lists legislation and regulations presently in place, under which the legal profession and lawyers are presently regulated in each Australian jurisdiction.

Jurisdiction	Sections	Pages
ACT		
Legal Profession Act 2006	603	496
Legal Profession Regulation 2007	89	85
Legal Profession (Barristers) Rules 2008	123	44
Legal Profession (Solicitors) Rules 2007	41	63
Subtotal	**856**	**688**
NSW		
Legal Profession Act 2004	739	439
Legal Profession Regulation 2005	178	130
Legal Profession Admission Rules 2005	3	1
Subtotal	**920**	**570**
Northern Territory		
Legal Profession Act 2006	760	416
Legal Profession Regulations 2007	96	75
Legal Profession Admission Rules	31	52
Subtotal	**887**	**543**
Queensland		
Legal Profession Act 2007	770	565
Legal Profession Regulation 2007	92	68
Supreme Court (Admission) Rules 2004	56	91
Subtotal	**918**	**724**
South Australia		
Legal Practitioners Act 1981	97	90
Legal Practitioners Regulations 1994	41	35
Supreme Court Admission Rules 1999	17	12

Subtotal	**155**	**137**
Tasmania		
Legal Profession Act 2007	661	412
Legal Profession Regulations 2008	68	93
Legal Profession (Board of Education) Rules 1994	19	17
Legal Profession (Disciplinary Tribunal) Rules 1995	23	8
Legal Profession (Prescribed Authorities) Regulations 2008	4	12
Admission to Courts Act 1916	7	3
Subtotal	**782**	**545**
Victoria		
Legal Profession Act 2004	690	589
Legal Profession Regulations 2005	106	99
Legal Profession (Admission) Rules 2008	46	107
Legal Profession (Practising Certificate Fees) Regulations 2007	5	5
Continuing Professional Development Rules 2008	9	7
Law Institute of Victoria Continuing Professional Development Rules 2008	21	7
Victorian Bar Continuing Professional Development Rules 2008	15	5
Supervised Legal Practice Rules 2006	6	1
Legal Profession (Board Election) Regulations 2006	30	21
Barristers' Practice Rules	197	54
Subtotal	**1125**	**895**
Western Australia		
Law Society Public Purpose Trust Act 1985	4	6
Legal Profession Act 2008	714	494
Legal Profession Regulations 2009	123	99
Legal Profession Admission Rules 2009	26	19
Subtotal	**867**	**618**
TOTAL	**6510**	**4720**

Attachment C – State and Territory Regulatory Bodies

Overview: Key State and Territory Regulatory Functions

The following table outlines the various bodies responsible for regulation in each jurisdiction, as well as the specific functions undertaken by each.

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
Vic	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)

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
NSW	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
Qld	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
ACT	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

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
WA	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
SA	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
Tas	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

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
NT	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

The Jurisdictions in More Detail

Victoria:

1. 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.

2. 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

3. 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

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	External examiners designated by the Law Society of NSW
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
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 Administrative Decisions Tribunal

Queensland

4. 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

5. The *Legal Profession Act 2006* (ACT) establishes the Legal Practitioners Admissions Board and sets out the functions of that Board and 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)
Practising certificate matters (grant, renewal, suspension, cancellation)	The Law Society
Maintenance of the register of local practitioners (lawyers with NSW 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

6. 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

7. 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.

Function	Who performs this function?
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 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)
Appeals of disciplinary orders	Supreme Court (review of Tribunal decisions)

Tasmania

8. 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	Law Society
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 Guarantee Fund	The Solicitors' Trust
Investigation of claims against the Guarantee 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 but appointed by firms
Appointment of external intervention of law practices	Supervisors of Trust Monies - Law Society Managers – Legal Profession Board Receivers – Court, Legal Profession Board application
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

9. 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.

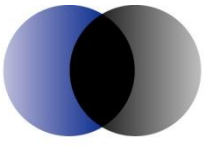
Function	Who performs this function?
Admission to the Supreme Court	Admission Board (advises the Supreme Court) (Law Society may object to admission)
Practising certificate matters (grant, renewal, suspension, cancellation)	Law Society
Maintenance of the register of local practitioners (lawyers with 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
Setting up professional indemnity insurance scheme	Law Society
Provision of professional indemnity insurance to law practices	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	Disciplinary Tribunal (Law Society may dismiss complaints)
Appeal of disciplinary decisions	Supreme Court

Cost Benefit Analysis of Proposed Reforms to National Legal Profession Regulation

Prepared for the Attorney-General's Department

March 2010



ACIL Tasman

Economics Policy Strategy

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Executive summary

ACIL Tasman was commissioned by the Australian Government Attorney-General's Department to undertake a cost-benefit analysis of National Legal Profession Reform proposals. The analysis builds on work undertaken by ACIL Tasman in 2009 for the Attorney General's Department on the costs of, and funding for, legal profession regulation in Australia.

The current report draws on the previous report and insights provided by selected stakeholders. Those insights were obtained through a process of targeted stakeholder consultations and were used to help inform the cost-benefit analysis and the accompanying analysis of the macroeconomic impact of the proposed reforms.

Note that in some cases there may be some differences between the data reported in the first report and this one. Any such differences are due to revisions made as a result of the additional information obtained from further stakeholder consultations conducted as part of this study.

Scope of the study

This study considered the costs and benefits of regulatory changes pertaining to:

- admissions
- practising certificates
  - one national practising certificate
  - low- or no-cost practising certificates for volunteers in community legal centres
- trust account compliance
- registration of foreign lawyers
- a National Register of Lawyers
- professional indemnity insurance approvals
- trust accounts, whereby multi-jurisdictional firms are required to have only one trust account
- business structures
- legal costs, and
- complaints handling.

This study includes both qualitative and, where possible, quantitative analyses of the proposed changes.

Key findings

Cost-benefit analysis

ACIL Tasman undertook the cost-benefit analysis utilising information obtained through a review of data from the previous project supplemented by the collection of new information through targeted stakeholder consultations.

The cost-benefit analysis assessed the net economic impact of the proposed new arrangements on consumers of legal services, the legal service providers and governments.

The costs and benefits of the regulatory changes are summarised in Table ES 1. The net annual benefit of the proposed reforms is estimated to be between $16.9 million and $17.7 million.

Table ES 1 **Costs and benefits of the National Legal Profession Reform proposals (2010 dollars)**

Regulatory item	Description of cost / saving	Year 1	Year 2	Year 3	Year 4	Year 5
Estimated costs (2010 $)						
National Board	Cost of main activities undertaken	3,465,365	2,905,701	2,905,701	2,905,701	2,905,701
National Ombudsman	Cost of main activities undertaken	634,821	634,821	634,821	634,821	634,821
National Register of Lawyers	Cost of developing and running the register	764,000	550,000	550,000	550,000	550,000
Total cost		**4,864,186**	**4,090,522**	**4,090,522**	**4,090,522**	**4,090,522**
Estimated savings (2010 $)						
Savings to regulators						
Rule setting	Saving from rule setting no longer being undertaken in the jurisdictions	286,720	286,720	286,720	286,720	286,720
Admissions	Saving from admissions assessment no longer being undertaken in the jurisdictions	2,448,174	2,448,174	2,448,174	2,448,174	2,448,174
Registration of foreign lawyers	Saving from registration of foreign lawyer no longer handled in the jurisdictions	83,401	83,401	83,401	83,401	83,401
Personal Indemnity Insurance	Saving from centralising and simplifying PII approvals	66,630	66,630	66,630	66,630	66,630
Trust Account inspections	Saving from fewer inspections due to fewer accounts	610,673	610,673	610,673	610,673	610,673
Complaints handling	Saving from streamlined complaints handling processes	2,211,388	2,211,388	2,211,388	2,211,388	2,211,388
Savings to law practices and legal practitioners						
Trust Account	Savings from operating one Trust Account	11,625,000	11,625,000	11,625,000	11,625,000	11,625,000
Other compliance costs	Saving from complying with uniform instead of disparate regulation	4,425,000	4,425,000	4,425,000	4,425,000	4,425,000
Total savings		**21,756,987**	**21,756,987**	**21,756,987**	**21,756,987**	**21,756,987**
Net savings		**16,892,800**	**17,666,464**	**17,666,464**	**17,666,464**	**17,666,464**

Data source: ACIL Tasman

ACIL Tasman computed the present value of the costs and benefits of the National Legal Profession Reform proposals over a 10-year time horizon, based upon the estimates of individual cost and benefit items. The present value was calculated using three alternative real discount rates. Under the preferred discount rate of seven per cent, the present value of total costs and benefits over the 10-year horizon were $31.5 million and $163.5 million respectively, with a net benefit of $132 million (all in 2010 dollars). This produced a benefit-cost ratio (BCR) of 5.19 under a seven per cent real discount rate.

ACIL Tasman has included estimates of transitional costs, such as those associated with creating new national registers and establishing new bodies. However, transitional costs are difficult to estimate and to the extent that they have been underestimated they could reduce the net benefit of the reforms in the early years.

In some cases, despite there being considerable confidence among stakeholders that benefits would flow from the proposed reforms, it was not possible to obtain quantitative estimates of the size of those benefits. This fact, together with a conservative approach to estimates of benefits, suggests that the reported results of the cost-benefit analysis could be regarded as providing a lower bound estimate.

Sensitivity analysis

ACIL Tasman undertook sensitivity analysis of the cost-benefit analysis results using Monte Carlo simulations. After 10,000 iterations, the 90 per cent confidence interval for the BCR was found to be (3.24, 7.22). That is, there is a 90 per cent probability that the 'true' BCR lies within this interval.

The key assumptions in determining the BCR (in decreasing order of importance) were found to be:

- the average percentage reduction in compliance costs for multi-jurisdictional firms from having only one Trust Account
- the percentage efficiency gain from centralising tasks at the National Legal Services Board
- the percentage reduction in the number of complaints requiring a lengthy resolution period under the new regulatory system with the National Legal Services Ombudsman
- the percentage reduction in the number of Trust Account inspections under the new regulatory system.

Macroeconomic impact analysis

Finally, ACIL Tasman estimated the wider economic impacts of the reform proposals on the Australian economy using a Computable General Equilibrium (CGE) analysis. This analysis was undertaken using ACIL Tasman's in-house CGE model, Tasman Global. This analysis takes into consideration the linkages between the legal services industry and other sectors of the economy.

The results for the modelled scenario showed an increase in Australian real GDP of about $23.6 million in the first year of implementation, increasing to just over $25 million by the fourth year (see Table ES 2). The projected benefits are driven by the estimated productivity improvements in the legal sector of the Australian economy.

Table ES 2 **Macroeconomic impacts of National Legal Profession Reform proposals (2010 A$ million)**

	2010-11	2011-12	2012-13	2013-14	2014-15
Change in value added	3.79	4.13	4.26	4.40	4.50
Other tax revenue changes	3.29	3.53	3.62	3.69	3.74
Productivity effects	16.53	17.21	17.11	17.15	17.01
Total change in real GDP (income side)	**23.61**	**24.87**	**24.99**	**25.24**	**25.24**
Change in real GDP – Low	16.58	17.59	17.71	17.96	17.96
Change in real GDP – High	30.65	32.28	32.40	32.65	32.65

Data source: ACIL Tasman modelling estimates

Sensitivity analysis of the projected benefits conducted at ±30 per cent produced an increase in Australian real GDP by some $18 million in 2014-15 under the low benefit scenario and almost $33 million under the high benefit scenario.

1 Introduction

ACIL Tasman has been commissioned by the Australian Government Attorney-General's Department to undertake a cost-benefit analysis of a proposal to reform on the regulation of the legal profession. The analysis includes an assessment of the economic impact on legal practitioners, law practices, consumers, governments and the wider Australian economy.

1.1 Background and context

The legal profession in Australia is currently regulated separately by each State and Territory (referred to throughout the report as jurisdictions). Although States and Territories have introduced harmonised legal profession legislation, differences remain across jurisdictions. These differences have resulted in impediments to seamless national practice, compliance costs and regulatory burdens that are not as low as they could be, and unnecessary differences in consumer protection mechanisms.

On 5 February 2009, as part of its microeconomic reform agenda, the Council of Australian Governments (COAG) decided to initiate reform of the regulation of the legal profession across Australia. At the request of COAG, on 30 April 2009, the Commonwealth Attorney-General established a Taskforce to identify a uniform and efficient regulatory framework and to prepare draft uniform legislation. The Taskforce aims to deliver:

- a national legal profession and a national legal services market through uniform, as well as simplified, legislation and regulatory standards
- clear and accessible consumer protection, providing consumers with the same rights and remedies regardless of where they live, and
- a system of regulation that is efficient, effective and proportionate to the issues being addressed through regulation.

The new regulatory framework consists of the following:

- *the courts*, which would continue to admit individuals to the profession
- *a single, national legal services regulator*, which would set and administer national regulatory standards, assess applicants for admission, register foreign lawyers and maintain a national register of admissions, registered foreign lawyers and disciplinary orders
- *a single, national legal services Ombudsman/commissioner*, which would oversee the State and Territory delegates in relation to complaints and compliance.

ACIL Tasman has previously provided the Taskforce with a quantified assessment of the current costs of legal profession regulation and the funding flows that covers those costs, as well as an estimate of the cost of the new

regulatory system that is being proposed. This report will complement that earlier report by assessing the overall economic impacts of the reform.

1.2 Project objective and scope

The objective of this study is to analyse the economic impact of the National Legal Profession Reform proposals on legal profession regulation on legal practitioners, law practices, consumers, government/non-government regulators, governments and the wider Australian economy.

Specifically, the study will:

- where possible, assess the economic impact, including the costs and benefits, of selected proposed regulatory reforms on legal service providers, consumers of legal services, governments and the national economy more broadly
- estimate the regulatory and compliance costs/savings of the proposed new regulatory system (using cost estimates that were developed as part of the recently completed ACIL Tasman report on the costs of regulation of the legal profession as well as cost estimates obtained during the targeted consultation for this report)
- estimate the transitional costs associated with the implementation of the proposed new system, and
- carry out a cost benefit analysis to assess whether the costs of the new system are outweighed by the economic benefits associated with the new system.

The results of the study will potentially be used in a Regulatory Impact Statement on the proposed reforms.

1.3 Project approach

ACIL Tasman structured the project into three main components. These are discussed in the sections that follow.

1.3.1 Data review

In this component, ACIL Tasman reviewed existing data on the costs and benefits of the proposed reforms. We drew on the responses to the survey of regulatory costs conducted during the course of the previous project undertaken by ACIL Tasman on legal profession regulatory costs.

1.3.2 Additional data collection

To better understand and quantify the benefits of the proposed regulatory reforms, ACIL Tasman carried out telephone interviews with a select group of

key representatives of the legal industry, consumer advocates and regulators. The consultation process was targeted, due to time constraints and confidentiality requirements.

The persons interviewed were selected with the assistance of the Attorney-General's Department and were broadly representative of the range of stakeholders with an interest in the proposed reforms. These stakeholders were invited to present insights into the potential impact of the proposed changes on their own and other stakeholder 'groups'. This is reflected in the presentation of stakeholder findings.

1.3.3 Cost benefit analysis and general equilibrium modelling

In this component ACIL Tasman carried out a cost-benefit analysis utilising the data obtained in the first two components of the project. The cost-benefit analysis assessed the net economic impact of the proposed new arrangements on consumers of legal services, the legal service providers and governments. The analysis is based on assumptions developed by ACIL Tasman as a result of information provided during the consultation process.

In addition, we estimated the wider impacts of the reform proposals on the Australian economy using a Computable General Equilibrium (CGE) analysis. This analysis was undertaken using ACIL Tasman's in-house CGE model, Tasman Global.

There were significant difficulties in obtaining detailed data for this project. Stakeholders were able to provide estimates of benefits in many cases, but these often related to one jurisdiction only. ACIL Tasman has used all relevant information it was able to obtain within the project timeframe to conduct the cost-benefit analysis of the proposed reforms. The results should be seen as preliminary estimates and we expect that as more information comes to hand they may be revised and refined.

In some cases, despite there being considerable confidence among stakeholders that benefits would flow from the proposed reforms, it was not possible to obtain quantitative estimates of the size of those benefits. This fact, together with a conservative approach to estimates of benefits, suggests that the reported results of the cost-benefit analysis could be regarded as providing a lower bound estimate.

Given the data was relatively uncertain in many cases, we undertook sensitivity analysis to obtain a better understanding of the range of likely outcomes and the factors that are important in determining the net economic benefit of the proposed reforms. The sensitivity analysis was conducted using Monte Carlo simulations.

1.4 Report structure

This report is structured as follows:

- Chapter 2 presents the National Legal Profession Reform proposals subject to analysis in this report
- Chapter 3 analyses the costs and benefits of key proposed regulatory changes, both qualitatively and quantitatively
- Chapter 4 analyses the costs and benefits of proposed changes to the structure of the regulatory system
- Chapter 5 presents the results of the cost-benefit analysis of the new regulatory framework
- Chapter 6 reports on the results of an analysis of the macroeconomic impacts of the proposed new regulatory framework using a CGE model.

2 National Legal Profession Reform proposals

2.1 Objective of the reform proposals

As noted previously, COAG has decided to reform the regulation of the legal profession. Simplification and substantive and enduring uniformity are the goals of this reform process.

The National Legal Profession Reform Taskforce has been tasked with establishing a regulatory framework that:

- creates and supports a national legal profession and a national legal services market through simplified, uniform legislation and regulatory standards
- provides for setting national standards, policies and practices wherever possible and appropriate
- ensures that legal practitioners can move freely between Australian jurisdictions and that law practices can operate on a national basis
- provides clear and accessible consumer protection, so that consumers have the same rights and remedies available to them, regardless of where they live in Australia
- is efficient and effective, and
- is robust, relevant and effective over time.

The National Legal Profession Reform proposals are designed to:

- reflect a simpler approach to regulation that minimises the compliance burden on law firms by focusing on requirements to be achieved, rather than prescribing the way in which they should be achieved
- promote international competitiveness, and
- facilitate pro bono work and access to justice.

The Taskforce proposals aim to strike a balance between creating uniform, national regulation and rationalising the regulatory system, while retaining the substantial expertise of existing regulatory bodies. The proposal is that the Ombudsman's functions are exercised by regulatory authorities in each State and Territory, including professional associations, subject to a "call-in" power. The National Legal Services Board's powers to grant and vary practising certificates would also be exercised by those regulatory authorities.

The system would be a co-regulatory one, which upholds the independence of the profession as it exists in the current system and recognises and utilises the valuable contribution of the profession and its representative organisations.

2.2 Overview of proposed framework

The new regulatory framework is proposed to consist of:

- the **courts**, which would continue to admit individuals to the profession
- the **National Legal Services Board**, which would set and administer national regulatory standards and approve providers of academic courses and practical legal training, assess applicants for admission, issue Certificates of Compliance, register foreign lawyers and maintain a National Register of admissions, registered foreign lawyers and disciplinary orders, and
- the **National Legal Services Ombudsman**, which, through his/her delegates in the States and Territories, would deal with consumer and other complaints against lawyers or law practices, including through mediation, conciliation or disciplinary action, and monitor and assist law practices with compliance.

The National Legal Profession Reform Taskforce proposes to continue utilising the expertise and local knowledge of existing regulatory authorities. It proposes that the National Legal Services Board and the National Legal Services Ombudsman confer operational functions upon State and Territory representatives. Local representatives of the Ombudsman would be permitted to further delegate functions to other regulatory bodies, which may include professional associations.

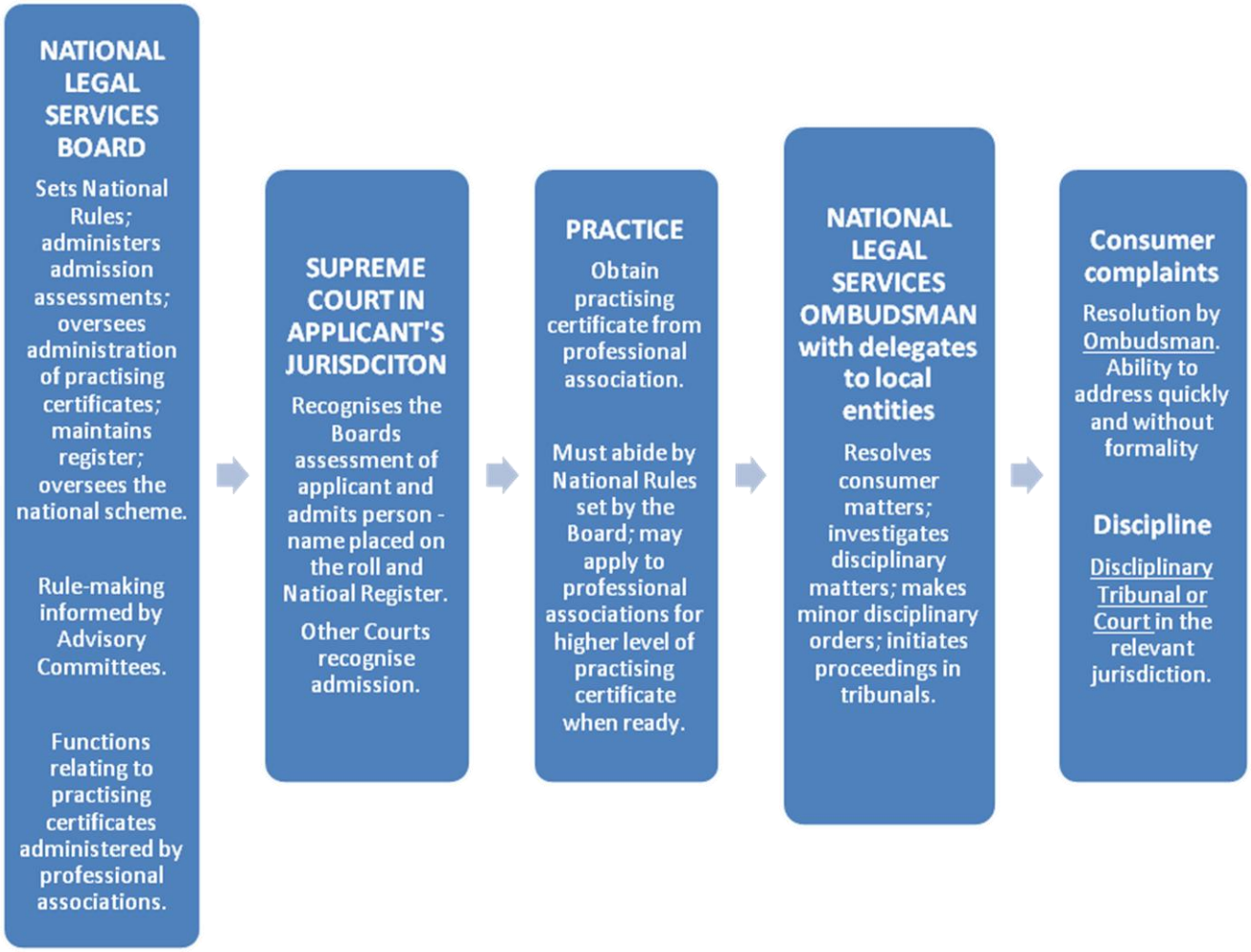
In particular, the Taskforce proposes that local representatives of the Ombudsman and Board continue to:

- grant, vary, amend, suspend and renew practising certificates
- undertake or manage compliance functions, including trust account inspections and investigations of trust accounts, external interventions and compliance audits
- receive, handle and resolve complaints and initiate disciplinary proceedings
- manage and control statutory funds and accounts, and
- determine claims against fidelity funds.

The Board and Ombudsman would have power to provide guidelines and directions to local representatives and their delegates in order to maintain national uniformity. They would also have the ability to 'call in' matters in certain circumstances, including where it is required to maintain national uniformity.

The proposed regulatory framework is illustrated in Figure 1 and discussed in detail in the following sections.

Figure 1 **Proposed national regulatory framework for the legal profession**



Source: Attorney-General's Department

2.2.1 National Legal Services Board

The National Legal Services Board would be a small body of around seven members appointed on the advice of the Standing Committee of Attorneys-General. Board members would be appointed on the basis of the member's expertise in one or more of the following areas:

- the practice of law
- the protection of consumers, and
- the regulation of a profession.

The Board would reflect a balance of expertise across these areas and would be broadly representative across different Australian jurisdictions.

The Board would determine National Rules for matters, including:

- admission, including academic qualifications and practical legal training; suitability for admission; and assessment of overseas qualified lawyers
- practising entitlements, including the grant, renewal, suspension and cancellation of practising certificates; conditions on practising certificates of Australian legal practitioners and practising entitlements of Australian-registered foreign lawyers; professional indemnity insurance requirements; and continuing professional development
- professional conduct, including duties to clients, the Court and other practitioners, such as requirements for confidentiality, and
- business practice, including requirements for trust money and trust accounts; management of fidelity fund claims; legal practice interventions and external management; and the regulation of business structures.

The Board's role in rule-making would be informed by an advisory committee or committees, comprised of representatives from the relevant stakeholder groups, including the professional bodies, the Courts, professional indemnity insurance providers, education institutions, consumers and State and Territory governments. The Board would not be permitted to delegate its national rule making role to any other person or body.

In addition to the Board's main role of setting National Rules, a number of operational functions would be centralised in the Board:

- processing admission applications (including applications from foreign lawyers) and issuing Certificates of Compliance – a single admissions committee operating under the Board rather than separate admissions committees around the country
- approving courses or providers of academic and practical legal training
- assessing and registering foreign lawyers
- approving professional indemnity insurance arrangements where approval is required, and
- receiving and maintaining necessary information about lawyers through a National Register.

The remainder of the Board's functions, i.e. those relating to the practising entitlements of Australian lawyers, would be conferred upon the professional associations in each jurisdiction.

2.2.2 Courts

Under the national regulatory framework, the Supreme Courts in the States and Territories would continue to be the admitting authorities, with the National Legal Services Board recommending to the Court in the applicant's jurisdiction whether or not an individual is eligible for admission. Admissions would be relayed to the Board and reflected on a National Register.

Admissions by one Supreme Court, once reflected on the National Register, would be recognised by all other Supreme Courts and the High Court of Australia.

The Courts would retain their inherent jurisdiction to discipline those appearing before them. Disciplinary orders for cancellation or suspension of practising certificates, or the imposition of conditions on practice, would also be reflected on the National Register.

2.2.3 National Legal Services Ombudsman

A National Legal Services Ombudsman would be appointed to administer and oversee a national complaints handling scheme. The Ombudsman and its local representatives would have a duty to endeavour to resolve consumer disputes quickly and informally, and an emphasis on ensuring consistency of consumer remedies and outcomes across the country.

The Ombudsman and its local representative would have a range of functions in relation to complaints against legal practitioners and law practices, including:

- receiving complaints
- investigating complaints
- resolving complaints
- making determinations and appropriate orders in relation to complaints of a consumer nature, and certain cases of unsatisfactory professional conduct
- prosecuting matters involving unsatisfactory professional conduct or professional misconduct in the appropriate disciplinary tribunal
- conducting internal reviews of certain decisions
- being involved in reviews by the disciplinary tribunal, and appeals to the Supreme Court in relation to disciplinary matters, and
- providing education to the public and legal profession about ethical issues, producing educational information about the complaints process and advising members of the public about the complaints process.

The Ombudsman would also bear responsibility for, or have oversight of, other decision-making and operational functions, such as interventions and external management. One function relating to practising certificates may be delegated to professional associations where appropriate.

As agents of the Ombudsman, the State and Territory representatives of the Ombudsman would exercise the same general powers and functions across Australia. The Ombudsman would monitor their work to ensure that they are exercising their powers appropriately.

2.3 Key changes in regulation

2.3.1 Admission

Under the National Legal Profession Reform proposals, the processing of admission applications (including applications from foreign lawyers) and the issuing of Certificates of Compliance would be undertaken centrally by the National Legal Services Board, rather than by separate admissions committees around the country.

The reform proposals also facilitate foreign lawyers wishing to practice in Australia. This includes a new conditional admission to allow foreign lawyers to practice for a short time, or exclusively in their area of expertise, without meeting all of the usual requirements for admission, and a national system for registering foreign lawyers to practice foreign law in Australia.

Existing barriers in this area have created unnecessary impediments for foreign lawyers needing to practise in Australia, but have also compromised Australia's ability to negotiate access for Australian lawyers to other countries' legal services market. The reform proposals will therefore in time lead to greater opportunities for Australian lawyers to provide their services overseas. This should enhance competition within the legal sector, in Australia and abroad.

2.3.2 Practising certificates

The National Legal Profession Reform Taskforce is also proposing a single, national Australian practising certificate with uniform conditions and requirements. This would replace the State and Territory practising certificate regimes that currently exist with differences in categories of certificates and practising entitlements.

Under the reform proposals, a low or no-cost practising certificate would be provided for those who wish to practice solely as volunteers at community legal services and all other practising certificates would permit voluntary practice at community legal services.

In addition, supervising legal practitioners in community legal services would not be required to pay fidelity fund contributions if the service will not be handling trust money.

2.3.3 Professional indemnity insurance

Under the reform proposals, the approval of professional indemnity insurance arrangements would no longer be required if the insurance provider is already approved by the Australian Prudential Regulatory Authority, and the arrangements comply with the requirements in the national law.

Similarly, APRA-compliant authorised deposit-taking institutions (ADIs) would not require approval from the Board to receive trust money.

2.3.4 Trust accounts

Under the reform proposals, law practices that operate in more than one jurisdiction, including small law practices or sole practitioners who operate over a State/Territory border, would only need to have one trust account, rather than one in each jurisdiction.

With one trust account, trust account examinations and investigations would be undertaken by one regulatory authority for the whole law practice, rather than a regulatory authority in each jurisdiction in which the law practice operates.

2.3.5 Business structures

Under the reform proposals, law practices would be free to choose the type of business structure through which they provide legal services, without unnecessary additional regulatory burden. At present, incorporated law practices are subject to requirements in addition to those required of unincorporated practices. The proposals also facilitate the emergence of new business structures.

2.3.6 Legal costs

The reform proposals also contain a new approach to the regulation of legal costs. The proposals comprise:

- simpler requirements for costs disclosures, which emphasise that the aim of disclosure is to obtain the informed consent of a client, rather prescribing than detailed and overly complex disclosure forms, and
- a requirement that legal costs be fair and reasonable.

2.3.7 Dispute resolution

The National Legal Services Ombudsman would provide a central point of contact for consumer complaints and focus on resolving consumer disputes that do not relate to disciplinary matters quickly and efficiently. It would also be able to consider small cost disputes.

Under the reform proposals, changes to the dispute resolution process include:

- consistency of consumer remedies and outcomes across the country
- measures for dealing with issues where there is a potential conflict of interest, so that they can be handled at arm's length from the profession

- Complaints would be assessed as containing consumer matters, disciplinary matters or both and all matters would be addressed. The Ombudsman or its local representative would determine whether a complaint meets the criteria for disciplinary proceedings to be commenced
- Complaints would be handled in accordance with the principles stipulated in the uniform legislation and any relevant National Rules set by the National Legal Services Board. Within these boundaries, the Ombudsman or its local representative would have flexibility in determining how disputes are to be resolved
- Where a complaint contains purely consumer matters and does not involve issues of discipline, the Ombudsman or its local representative should be able to deal with the matter quickly and without formality
- The Ombudsman and its local representatives would have power to: facilitate informal resolution of matters; facilitate mediation; issue binding determinations for consumer and minor misconduct matters; and initiate disciplinary proceedings in the relevant tribunal in the jurisdiction with the closest connection to the matter
- The Ombudsman and its local representatives could call on the assistance of others, including professional associations
- State and Territory disciplinary tribunals would continue to deal with complaints brought against Australian Legal Practitioners by the National Legal Services Ombudsman or its local representatives. However, the jurisdiction of, and remedies available through, the tribunals would be made uniform, and
- The Ombudsman and its local representatives would also administer compliance functions, including trust account examinations and investigations, external interventions and compliance audits.

3 Assessment of costs and benefits of key changes in regulation

This chapter presents a high-level assessment of the potential benefits (and to the extent that it is relevant, the cost) of National Legal Profession Reform proposals pertaining to:

- admissions
- practising certificates
- registration of foreign lawyers
- the National Register of Lawyers
- professional indemnity insurance
- trust accounts
- business structure
- the fairness and reasonableness of legal costs, and
- complaints handling.

These assessments have been based upon inputs provided by selected stakeholders who participated in targeted consultations with ACIL Tasman. As noted in the introduction to this study, in most cases the information available related to a single jurisdiction. However, to the extent possible, ACIL Tasman has attempted to develop indicative estimates of the magnitude of potential national benefits arising from the reform proposals.

In each case we have sought to identify the financial savings, time cost savings, efficiency gains and costs associated with the proposed reforms. We have also listed key stakeholder information provided to ACIL Tasman under each reform proposal, as it relates to the development of assumptions and findings, where it stimulates discussion about the effects of regulatory changes or indeed adds to a qualitative assessment of the likely effects of the regulatory change.

It is noted that financial savings will occur when a legal practice or practitioner is required to outlay fewer financial resources in meeting regulatory requirements. While, ultimately, time savings made by professionals will also flow on as financial savings, we consider time and cost savings separately.

Time savings occur when an individual (or group of individuals in a firm) spends less time carrying out certain tasks.

As emphasised previously, despite there being considerable confidence among stakeholders that benefits would flow from the proposed reforms, in some cases it was not possible to obtain quantitative estimates of the magnitude of those benefits. Together with a conservative approach being adopted in

estimating benefits that could be quantified, this suggests that the reported results of the cost-benefit analysis could be regarded as lower bound estimates.

All projected costs and benefits are reported in real terms, that is, in constant 2010 dollars.

3.1 Admissions

Under the National Legal Profession Reform proposals, admission applications (including applications from foreign lawyers) and the issuing of Certificates of Compliance will be undertaken centrally by a single admissions committee operating under the National Legal Services Board, rather than by separate admissions committees around the country.

Financial savings

The feedback from stakeholders on potential financial savings relevant to each group is noted below.

Benefits to regulators

- The extent of any benefits will be determined by what jurisdictions decide to do. While jurisdictional admission will not be needed, the role of the Supreme Court will be unchanged.

No other feedback was provided by stakeholders.

Time cost savings

The feedback from stakeholders on potential time cost savings relevant to each group are noted below.

Benefits to regulators

- There may no longer be a need for jurisdictional assessment boards. One jurisdiction noted that its assessment board consisted of three solicitors and two barristers, all of whom volunteered their time to undertake assessments. Evaluating assessment applications includes tasks such as reviewing degrees/diplomas, sighting statutory declarations and reviewing evidence from witnesses. One administrator assists the assessment board. That assistance is one of several tasks undertaken by him/her. Under the new system, this person may not be required to assist the board in assessing admissions, as his/her role may be made redundant by the national assessment system. However, he/she may still be required to assist the Supreme Court judge in other matters.

Other efficiency gains

The feedback from stakeholders on potential time cost savings relevant to each group are noted below.

Benefits to legal practitioners

- The experience of one stakeholder has been that judges sometimes do not allow a lawyer who has not been admitted in their jurisdiction to represent a case in Court. Such limitations could be removed by the national admission.

Benefits to firms

- There will be efficiency gains for multi-jurisdictional law firms if the same fees, forms and processes are implemented across Australia.

Costs

- Incorporating national assessments into the role of the Board will involve an additional cost, because the function does not currently exist. Admission costs may need to be increased to cover this new role.
- Large numbers of applications will have to be dealt with by the same body, potentially slowing down the time it takes to undertake assessments.
- One jurisdiction noted that its expenses from assessments for one year was nearly $1.7 million.

Assumed impact

The benefit of having centralised admission will be the avoided costs of assessing admissions in each State and Territory. Based on ACIL Tasman's previous report on the costs of regulating the legal profession in Australia, these costs amount to $2.45 million each year.

3.2 Practising certificates

This study considered the impacts of two reform proposals relating to practising certificates (PCs):

1. A single national PC, and
2. A low or no cost PC for volunteers in community legal centres.

3.2.1 National practising certificate

Stakeholders noted that a national PC would not produce any significant additional benefits to legal practitioners as a system of mutual recognition was already in place. However, it was also noted that lawyers practicing in one jurisdiction were required to complete additional PC applications if they wanted to practice in another jurisdiction. These applications were estimated to

take 10 times longer to process than a 'local' application due to the need to check interstate credentials.

Assumed impact

ACIL Tasman did not obtain sufficient data to separately estimate the compliance cost savings associated with a national practising certificate. However, such savings are included in a broad estimate of savings associated with a uniform regulatory system (see Section 3.11).

As the processing of PCs is expected to continue to be undertaken by jurisdictions, regulatory costs pertaining to PCs are likely to remain largely unchanged.

3.2.2 Low or no cost practising certificate for volunteers

It is proposed that volunteers engaged in work with community legal centres be allowed to obtain a low cost PC or a PC that is free of charge. Stakeholders were asked for information on the potential costs and benefits of this proposal. The feedback from stakeholders on potential savings is noted below.

- Access to low or no cost PCs for volunteers could improve the access to legal support for consumers.
- Low or no cost PCs could also mean that small scale practitioners (such as those who are retired) who wish to stay 'in touch' with the industry can do so. It was noted that any cost for a volunteer is a disincentive to provide a service.
- Many volunteers already had PCs for existing paid work, therefore would not require another one for any volunteer work.
- There could be revenue shortfalls for processing bodies which use fees obtained from the applications for, or renewal of, PCs to assist the undertaking of their operations. That said, it was also noted that the number of volunteers in community legal centres was actually quite small compared to the total number of PCs distributed in a given year.
- It was also noted that PCs are a means of ensuring that a lawyer is complying with all the conditions of practice (professional development, insurance, etc). As such, it was suggested that all lawyers should be required to be appropriately approved irrespective of the client.

Assumed impact

Based on the feedback from stakeholders, we believe that the impact of low or no cost PCs will be negligible, and that the considerable number of practitioners who would still be required to pay for PCs will muffle the effect on regulators.

3.3 Registration of foreign lawyers

Two proposals affecting foreign lawyers have been considered in this analysis:

1. The National Board will assess and register foreign lawyers, and
2. A new conditional admission will be introduced to allow foreign lawyers to practice for a short time or exclusively in their area of expertise without meeting all of the usual requirements for admission.

Regarding these proposals, while specific time cost and financial savings were not provided by the stakeholders consulted by ACIL Tasman, some views about efficiency gains were provided. These are noted below.

- A system that is consistent across jurisdictions is likely to result in efficiency gains. At present, different jurisdictional bodies interpret rules differently and there are inconsistencies in the extent to which foreign lawyers must finalise their studies in Australia to become registered.
- It will enhance a law firm's ability to recruit and hold onto foreign lawyers, as a result the cost and availability of overseas lawyers will be markedly improved.

Assumed impact

The benefits from the centralisation of the registration of foreign lawyers stem from avoided costs of processing these registrations in different jurisdictions. According to ACIL Tasman's previous report, these benefits total approximately $83,000 per annum.

3.4 National Register of Lawyers

A proposal to develop a National Register of Lawyers is another reform considered in this analysis. This Register is expected to provide a one-stop shop for information pertaining to legal profession regulation. The model upon which this analysis is based is a Queensland legal services industry information portal:

> The Legal Services Commission has developed a portal[1] – lpportal.org.au – which will give members of the public and authenticated users including lawyers, law firms, external examiners, and legal academics seamless one-stop shop access to compliance tools and other regulatory products made available by multiple participating regulators … regulatory products can 'pull' information in, including not only self- assessment data but also other compliance audit data, external examination reports of law firm trust accounts and various statutory notifications that lawyers and law firms are required to make to the QLS. Equally they can 'push' information out, including firm specific and aggregated, de-identified complaints and compliance audit data,

[1] The portal will be launched on 31 March 2010.

profession analysis data, discipline registers, listings of practitioners and law firms and the like (Briton, 2010).

Financial savings

The feedback from stakeholders on potential financial savings relevant to each group is noted below.

Benefits to regulators

- There would very likely be savings. However, a dollar figure cannot be placed on them. The costs of moving forwards would have to be considered against the costs of several inefficient systems that do not 'talk' to one another.

No other feedback was provided by stakeholders on this subject.

Time cost savings

The feedback from stakeholders on potential time cost savings relevant to them is noted below.

Benefits to legal practitioners

- Data that tracks the 'life cycle' of a lawyer could be entered once, with updates being made over time. The same would apply to law firms if administrators managed data.

Other efficiency gains

The feedback from stakeholders on other efficiency gains is noted below.

Benefits to regulators

- Different data sets that can 'talk' to each other would be stored on the same database. Data could be cross referenced, therefore enabling regulators to identify risks and take appropriate action.

Costs

The feedback from stakeholders on costs associated with developing an online system are noted below.

- The Queensland database is based on around five years of intellectual effort. Adapting existing software (such as the Queensland system) to become national could be done in a matter of months.

Assumed impact

Based on the information obtained in the stakeholder consultation process, the assumptions shown in Box 1 were used to estimate the impact of the change to admissions.

Box 1 **Assumptions – National Register of Lawyers**

- Consultations with an independent IT industry representative suggest that the one-off development cost of an online register would be of the order of $214,000, and that recurrent costs would be around $550,000 per annum. These costs would cover hosting providers, staff developers, hardware and licences. We stress that these figures are estimates, in the absence of having full details of the proposed system.

Source: ACIL Tasman based on stakeholder consultations.

The estimated cost of establishing and maintaining a National Register is $764,000 in the first year and $550,000 in subsequent years. This cost includes the development and ongoing maintenance of the system.

3.5 Professional indemnity insurance

This study considered the impact of a reform proposal affecting professional indemnity insurance (PII). Under this proposal, the approval of individual PII products will no longer be required if the insurance provider is already approved by the Australian Prudential Regulation Authority (APRA).

Limited information was provided during the consultation process that could enable us to quantify any potential financial or time cost savings. The feedback from stakeholders on potential efficiency gains is shown below.

- Efficiency gains could be achieved if a firm insured in one jurisdiction is not required to take out insurance or obtain an exemption in the other jurisdictions in which it does business (as is currently the case).
- One regulator noted that it has one person spending approximately one week per policy seeking its approval.

Assumed impact

ACIL Tasman's previous report estimated that regulators in the States and Territories spend a total of $66,630 each year in approving and managing PII schemes.

The analysis assumes that centralised PII approval results in an efficiency gain of approximately 80 per cent. This is based on advice that only a small number of schemes would require approval under the new regulatory system as the majority would have already been approved by APRA. Based on this assumption, the cost incurred by the Board will be reduced to approximately $13,000 per annum.

3.6 Trust accounts – operation

This study considered the impact of a reform proposal that will affect the operation of trust accounts. Under this proposal, law firms operating in more than one jurisdiction will be able to have only one central trust account as opposed to needing a separate trust account for each jurisdiction they operate in, as is required under the current system.

Financial savings

The feedback from stakeholders on potential financial savings relevant to this proposed reform is shown below.

Benefits to firms

- There would be a reduction in the number of external examinations (including reports and assessments), with only one examination needed for a firm instead of one for each account. That said, the volume to be considered in that report could be expected to be bigger. Overall, it could take longer to undertake a bank reconciliation, thereby increasing the time costs of examiners. It was noted that the cost of an external examination varies considerably.
- It was estimated that trust accounts can incur costs associated with account requirements and administration of up to $1 million per year in large law firms. Having one account instead of separate accounts in each jurisdiction has the potential to provide savings.
- Relevant law firms will only need one financial system, although most firms already have sophisticated systems in place so there would be no real savings. This, however, is dependent on the current method of operation.

Benefits to regulators

- One jurisdiction noted that it spent approximately $2.25 million on trust account inspections in the last financial year. It also noted that around 50 per cent of inspections were undertaken 'for a reason'. Fewer accounts requiring fewer inspections could reduce this cost.
- It was noted that a random inspection of a trust account conducted by an auditor can take three to five days to complete.
- It was estimated that all trust accounts in one jurisdiction are inspected once every five years.

Time cost savings

The feedback from stakeholders on potential time cost savings relevant to each group are noted below.

Benefits to legal practitioners

- Senior practitioners (or partners) within a firm may benefit in the sense that they are required to monitor trust accounts for their firm. It was estimated that a partner could spend up to three hours monitoring a trust account each week.

Benefits to firms

- Having one system instead of several has the potential to reduce the amount of staff time needed to manage trust account funds. However, there will still need to be a point of entry in each jurisdiction to undertake tasks such as issuing receipts and drawing cheques. The net effect may be negligible. Similarly, while fewer staff would be required to manage reconciliations, they would still be required to input data. It was suggested that, overall, if a firm reduced the number of trust accounts from six to one, it would be unlikely that there would be an 83 per cent (i.e. 5/6th) reduction in the workload to manage the accounts.
- It was estimated that a smaller law firm may have one senior administrator spending 50 per cent of their time managing and monitoring a trust account.

Costs

The feedback from stakeholders on potential costs is noted below.

Costs to regulators

- There could be a significant cost impost if trust accounts move out of one jurisdiction, which would be associated with the obligation for a proportion of trust account funds to be contributed to regulatory purposes, such as Legal Aid, law foundations, servicing practitioners, grants, etc. One jurisdiction estimated that the 18 accounts that could potentially 'move' to another jurisdiction could reduce the regulatory contribution by $6.3 million in one year. It was also noted that the opposite would occur if trust accounts moved into that jurisdiction. [ACIL Tasman understands that a funding formula will be developed to distribute interest to individual jurisdictions from multijurisdictional trust accounts.]

Other comments

- One stakeholder noted that the actual number of firms affected by the change to trust accounts could actually be quite small. For one large jurisdiction, potentially 18 out of around 1,800 trust accounts could be affected by the changes. One small jurisdiction noted that only a very small number of trust accounts could be affected.
- There could be potential issues if funds are deposited into the single account by a practitioner in one jurisdiction and there is a trust account 'crime' against these funds committed by a third party (unbeknownst to the practitioner) in another jurisdiction. Potentially costly and time intensive issues may ensue in determining which jurisdiction's Fidelity Fund should be used to compensate the consumer.

Assumed impact

Using information obtained in the stakeholder consultation process, the assumptions used to estimate the impact of the change to trust accounts (one central trust account) are shown in Box 2.

Box 2 **Assumptions – trust accounts**

- The cost for managing trust accounts for firms ranges from $1 million (for large firms assumed to have more than one trust account) to $25,000 (for small firms assumed to have only one trust account).
- For firms with more than one trust account, the cost of managing trust accounts decreases by a quarter (25 per cent) irrespective of the number of trust accounts they previously were required to hold.
- There are nine large firms and 75 medium firms which could be affected by the regulatory change, with the remainder being small firms that are not affected by the regulatory change.

Source: ACIL Tasman based on stakeholder consultation.

The requirement of one consolidated trust account instead of separate accounts in each jurisdiction for law practices operating in more than one jurisdiction is expected to produce compliance cost savings of approximately $11.6 million per year. This saving is due to administrative time savings.

3.7 Trust account compliance issues being handled by the National Legal Services Ombudsman

It is proposed that compliance relating to trust accounts, including investigation and inspection functions, be handled by the National Legal Services Ombudsman.

Costs

The feedback from stakeholders on potential impact of the reforms on costs relevant to each group is noted below.

Costs to consumers

- One jurisdiction noted that trust account issues are currently acted on within a week of receiving advice relating to a deficiency, with investigations lasting between one day and five weeks (major investigations usually last for one month). Having the National Legal Services Ombudsman will add another layer of work, as the issue will filter down from the Ombudsman to the relevant jurisdictional bodies. This will increase the time it takes to deal with a deficiency.

- Regulators would not be in a position to act proactively on certain occasions.

Costs to regulators

- One jurisdiction spent $2.25 million on trust account inspections in one year.

Assumed impact

Using information obtained in the stakeholder consultation process, the assumptions used to estimate the impact of the change to trust account compliance are shown in Box 3.

Box 3 **Assumptions – trust account compliance**

- Based on information provided by a large jurisdiction, it costs approximately $960 to inspect each trust account.
- There are approximately 6,300 trust accounts in Australia.
- There would be a 10 per cent reduction in the number of trust accounts, based on stakeholder advice that only a relatively small number of trust accounts will be affected by changes to trust account regulation.

Source: ACIL Tasman based on stakeholder interviews

Costs under the existing regulatory system are estimated to total $6.1 million per annum across jurisdictions. This cost relates to that incurred by regulators undertaking the assessment. As a result of having to conduct fewer assessments under the reform proposal, the cost for regulators is expected to be reduced to $5.5 million per annum. The estimated net effect is therefore a saving of $610,000 per annum.

3.8 Business structure

Under the proposed reforms, law firms will be able to choose the type of business structure through which they wish to provide legal services.

Limited information was provided during the consultation process that could quantify any potential financial or time cost savings. However, the feedback from stakeholders on potential efficiency gains is shown below.

- The barriers that need to be removed are those facing law firms wanting to adopt alternative business structures (such as tax and stamp duties), and allowing law firms to become limited liability partnerships. Removing these barriers would give firms more flexibility to choose an efficient business structure (which would be beneficial to consumers) and structures that allow them to compete with global law firms.

Assumed impact

There is insufficient information to determine the impact of this proposal. Further, most stakeholder comments indicate complex efficiency gains, rather than simple financial or time cost savings.

3.9 Legal costs

Two reform proposals affecting legal costs have been considered for this analysis:

1. All legal costs will be required to be "fair and reasonable", and
2. The National Legal Services Ombudsman will be involved in resolving cost disputes.

The feedback from stakeholders consulted by ACIL Tasman did not provide information relating to the potential time cost and financial savings of these proposals. However, the stakeholder feedback on efficiency gains is noted below.

- "Fair and reasonable" conditions will require lawyers to consider in more detail the disclosure of fees.
- Involvement of the Ombudsman in cost disputes, coupled with the "fair and reasonable" requirement, will make it easier for a decision to be made for a given situation.

Assumed impact

There is insufficient information to determine the benefits of this proposal. Further, stakeholder comments indicate small scale efficiency gains rather than simple financial or time cost savings.

3.10 Complaints handling

Under the proposed reforms, the National Legal Services Ombudsman will act as a one-stop shop to address consumer complaints, with authorities in the jurisdictions exercising the Ombudsman's powers regarding consumer complaints.

Financial savings

The feedback from stakeholders on potential financial savings relevant to each group is noted below.

Benefits to regulators

- If the Ombudsman has the power to resolve with finality, then reduced costs could be a result.

Time cost savings

The feedback from stakeholders on potential time cost savings relevant to each group are noted below.

Benefits for consumers

- There will likely be quicker outcomes for complaints as alternative dispute resolution methods may be used.
- One jurisdiction described its complaints process targets:
  - Acknowledgement of written complaints within three days
  - Analysis within a further two days to determine handling process or referral
  - If necessary, referred within three days.

  It was indicated that 75 per cent of complaints were handled within the receiving office, with 25 per cent referred to professional associations. One jurisdiction noted that:
  - around 9,000 telephone complaints and 3,000 written complaints are received in a year, with up to 5,000 of the telephone complaints resolved at the first point of contact
  - mediation or dispute resolution costs up to $2 million per year, with investigations (including Court prosecutions) costing around $1 million per year
  - just over half of all matters were resolved within three months, and around 80 per cent were resolved within six months.

  This jurisdiction considered that if the National Legal Services Ombudsman has principle- or outcome-focused legislation, then it should result in a greater emphasis on professional guidelines and closer engagement between the profession and the regulator. This could, in turn, lead to more use of dispute resolution and less reliance on formal investigation and litigation.

Other efficiency gains

The feedback from stakeholders on other efficiency gains is provided below.

Benefits for consumers

- Decisions affecting consumers would be perceived as 'fairer' as they would not be reviewed by a body that may also represent the interests of lawyers.
- A nationally consistent approach to dealing with complaints will be maintained, rather than an ad hoc process.
- There will be a division between consumer complaints and disciplinary complaints. Current systems do not distinguish between the two broad types of complaints (consumer and disciplinary). This can lead to significant resources being dedicated to investigating minor transgressions.

Costs

The feedback from stakeholders on the potential costs is noted below.

Costs to legal practitioners

- If the proposal requires mandatory mediation and requires lawyers to attend mediation in person, it will not promote efficiency. It may also be a significant cost impost on law firms.

Other comments

- Consumers will not benefit if the Ombudsman does not have sufficient powers and cannot appropriately resolve disputes. If there was not enough power provided to the Ombudsman, investigations (rather than decisions) would likely be undertaken, however the investigations would be impartial and independent.
- Time savings may be unlikely if powers are delegated to the jurisdictions.

Assumed impact

Based on the information obtained through the stakeholder consultation process ACIL Tasman made a number of assumptions to estimate the impact of the changes to complaints handling. These assumptions are shown in Box 4.

Box 4 **Assumptions – complaints handling**

- It is assumed that approximately 45 per cent of complaints take longer than three months to resolve. These complaints will be handled with greater efficiency under the national regulator.
- The streamlined process will lead to a reduction in the number of complaints that take an extended period of time to resolve. Specifically, under the reform proposal, it is assumed that there will be a 20 per cent reduction in complaints that take more than three months to resolve.

Source: ACIL Tasman based on stakeholder consultation.

ACIL Tasman estimates that a nationally consistent and streamlined approach to dealing with complaints could result in savings to regulators of $2.2 million per annum. The simplified complaints handling process may also deliver savings to law practices, although there is insufficient data to quantify this.

3.11 Benefits to uniformity for law firms

While the preceding sections focused on the costs and benefits of individual reform proposals, stakeholder consultations indicated additional compliance cost savings that could result from uniform national regulation, particularly for

larger law practices. The assumptions used to estimate the impact of these cost savings are shown in Box 5.

Box 5 **Assumptions – compliance cost savings for large and medium-sized law firms**

Nine large law firms and 75 medium-sized law firms are expected to benefit from a more uniform system.

- Larger law firms (i.e. large multijurisdictional firms) would save an average of $950,000 per year from a uniform system. Savings could be found in areas associated with:
  - cost agreements and billing
  - trust provisions
  - practising throughout Australia
  - admission
  - practising certificates
  - professional conduct rules
  - Continuing Professional Development, and
  - Professional Indemnity Insurance.
- Medium-sized law firms (i.e. smaller multijurisdictional firms) could save on average $100,000 per year from a uniform system. Savings could be found in areas associated with:
  - trust accounts
  - billing
  - accounting directing to clients
  - marketing and business services
  - practising certificates
  - admission requirements
  - registering foreign lawyers, and
  - Continuing Professional Development.

Source: ACIL Tasman based on stakeholder consultation.

Based on these assumptions, a total of approximately $16.05 million in compliance costs would be saved by large and medium-sized law firms as a result of a uniform legal system flowing from the proposed reforms. This includes $8.55 million in savings for large law firms and $7.5 million for medium-sized law firms.

Some of this amount, such as the savings to law firms from having to only administer one trust account was accounted for separately in Section 3.6. Excluding trust account compliance cost savings (estimated to be $11.625 million), ACIL Tasman estimates that $4.425 million in other compliance costs would be saved by large and medium-sized law firms under a uniform regulatory system.

4 Assessment of costs and benefits of structural changes to the regulatory system

This chapter analyses the main costs and benefits associated with the National Legal Profession Reform proposals that relate primarily to the structure of the regulatory system. They include the costs pertaining to the development of the National Rules as well as the establishment and operation of the National Legal Services Board and the National Legal Services Ombudsman.

4.1 Development of the National Rules

The development of the National Rules will not be a task starting 'with a blank canvas'. Instead it is expected that rules developed and refined by jurisdictions over time will form the platform upon which national rules are developed, with necessary refinements being made to 'nationalise' the rules.

4.1.1 Information from stakeholder consultations

Regardless of whether rules are 'new' or based on current rules, the involvement of volunteers in the process is significant. While volunteer time is not 'paid', it should be valued in terms of what the individual has foregone in order to undertake unpaid work. The feedback from stakeholders on the time and other requirements needed to develop National Rules is provided below.

Stakeholder 1

- Admissions rule setting has required the services of two full time and two part time workers. This is complemented by pro bono volunteer work.
- Professional conduct rules are set by a volunteer committee. Rules are generally reviewed every two years.
- Volunteer time requires administrative resources.
- Rules committees meet monthly to consider ad hoc rule changes.

Stakeholder 2

This stakeholder provided legal practice rules as an example. Human resource requirements included:

- A Bar Committee of up to 12 members developed concepts for rules, which were forwarded to another agency for drafting.
- A further team of up to 12 members drafted the rules.
- A further Board Committee with five members reviewed the draft rules and made recommendations to the Board.

This stakeholder estimated that one Committee would spend two to four weeks per year refining rules. In total, the Bar Committee may spend up to four weeks per year and the Board Committee up to one week per year. It was estimated that around two months per year could be spent by legal professionals setting rules. An indicative salary for this group could be $120,000 per annum. It was noted that Board Committee members are modestly remunerated, while Bar Committee members volunteer their time.

Stakeholder 3

This stakeholder provided its contribution to the Law Council of Australia's revision of the national rules for barristers and national rules for solicitors as an example. Estimates of human resources used for the consultation process for this jurisdiction include:

- Four working groups, with five members in each (i.e. 20 members in total). Each team member spent up to 10 hours on the task. Members were senior practitioners.
- A further 16 Council members were involved. Each Council member spent approximately five hours on the task.
- A further four Law Society staff (comprising two lawyers, one accountant and the CEO) were also involved. Three of these members spent around three hours on the task, with one spending 40 hours on the task.

Stakeholder 4

This stakeholder has developed national professional conduct rules. The human resource requirements included:

- A volunteer committee of 15 members spending around three to four per cent of their time over a nine month period developing the rules. Volunteer work was undertaken outside of normal work hours.

Stakeholder 5

This stakeholder noted that there are three to four requests to amend regulations each year. The human resource requirement includes:

- One policy officer spending one week on each request (that is, a total of four weeks).
- Two weeks of professional time per request.

In addition to the time spent setting or refining rules, consultation also revealed that a considerable number of administrative staff is required to support the various Boards and Committees.

Finally, the consultations revealed that the timing of rule changes was often ad hoc, although there was some regularity enforced by jurisdictions. In general it is very likely that rules are refined about once every one or two years. It was estimated that, on average, a legal practitioner spends about an hour reading, understanding and assimilating a rule change.

4.1.2 Cost and benefit estimates

Using information obtained in the stakeholder consultation process, the assumptions used to estimate the impact of the change to admissions are shown in Box 6.

Box 6 **Assumptions – the National Rules**

- There will be an initial cost of moving to a system of National Rules, consisting of costs incurred by the Board and costs incurred by jurisdictions. The costs incurred by the Board are based on the human resource requirements estimated by *Stakeholder 4*. The costs incurred by jurisdictions are based on the human resource requirements referred to by *Stakeholder 3* and scaled to reflect the size of the jurisdiction.
- There are ongoing costs associated with a system of National Rules. These are estimated based on the salaries of seven Board members (spending 40 hours each per year), 12 Advisory Committee members (spending 80 hours each per year) and eight administrative support workers (spending 40 hours each per year).
- There will be avoided costs as a result of a system of National Rules. The ongoing cost is based on the human resource requirements incurred by *Stakeholder 5*.

Source: ACIL Tasman based on stakeholder consultation.

Based on these assumptions, the initial cost of the National Rule system is $474,600 in the first year, with ongoing costs of $129,000 each year thereafter.

4.2 Establishment and operation of the National Legal Services Board

ACIL Tasman adopted a bottom-up approach to estimate the cost of the National Legal Services Board, costing each activity of the Board based on assumed efficiency gains applied to the cost of undertaking the activity separately in each jurisdiction. The costs of the current regulatory system are drawn from ACIL Tasman's previous report on the costs of regulating the legal services profession (see Box 7).

Box 7 **Assumptions – National Legal Services Board**

- Costs from previous report relevant to the Board's functions are:
  - Assessment of Australian-qualified applicants for admission: $1.9 million
  - Assessment of foreign-qualified applicants for admission: $550,000
  - Accreditation of academic legal training institutions: $122,000
  - Accreditation of practical legal training institutions: $113,000
- All of the aforementioned costs are subject to a 20 per cent efficiency gain.
- Additional costs relevant to the Board that covered by other components of the report include:
  - Approving PII arrangements when required: $13,000
  - Maintaining a National Register of Lawyers: $214,000 in development costs and $550,000 in ongoing costs.
  - National Rule setting: $474,600 in the first year and $129,000 in ongoing costs.

Source: ACIL Tasman, 2009.

Note: costs are scaled up from those reported by ACIL Tasman in its first report to take account those jurisdictions that did not respond to the data request.

Based on these assumptions, the cost of the National Legal Services Board is estimated to be $3.47 million in the first year and $2.91 million every year thereafter. A breakdown of the Board's cost by activity is shown in Table 1.

Table 1 **Estimated cost of the National Legal Services Board by activity (2010 dollars)**

Activity	Annual cost under current regulatory system (activity undertaken by States /Territories)	Estimated annual cost under new regulatory system – initial year	Estimated annual cost under new regulatory system – subsequent years
Assessment of admission applications	$2.448m	$1.959m	$1.959m
Accreditation of institutions that provide academic and practical legal training	$0.235m	$0.188m	$0.188m
Registration of foreign lawyers	$0.083m	$0.067m	$0.067m
Approving personal indemnity insurance when required	$0.067m	$0.013m	$0.013m
National Register of lawyers – one-off development cost	Not applicable	$0.214m	$0.000m
National Register of lawyers – ongoing costs	Not applicable	$0.550m	$0.550m
National rule setting – initial cost	Not applicable	$0.475m	$0.000m
National rule setting – ongoing costs	Not applicable	$0.000m	$0.129m
Total cost of the Board		**$3.465m**	**$2.906m**

Data source: ACIL Tasman

4.3 Establishment and operation of the National Legal Services Ombudsman

As in the case of the National Legal Services Board, ACIL Tasman adopted an activity-based approach in estimating the cost of the National Legal Services Ombudsman. The principal activities that will be undertaken by the Board are:

- handling a proportion of complaints made against law practices and legal practitioners, and
- undertaking internal reviews requested by complainants who are unhappy about the outcome of their cases.

4.3.1 Costs associated with complaints handling

Jurisdictions reported a total of 7,075 complaints received in 2007-08. Of those 7,075 complaints, 5,720 were investigated either by the complaint-handler that received them or by another regulatory authority (which could be a professional association). At least 930 were referred to a non-legal profession regulation authority (such as ASIC or a fair trading authority).

It is assumed that, under the new regulatory system, approximately five per cent of the investigated complaints (that is, 289 complaints out of 5,720) will be handled by the National Legal Services Ombudsman each year. Data from the New South Wales Office of the Legal Services Commissioner and the Queensland Legal Services Commission indicated that the cost to handle each complaint averaged $1,331 and $2,711 respectively. Using an average of the two figures and applying it to the 289 complaints, yields an estimated cost of complaint handling by the National Ombudsman of $580,000 a year.

4.3.2 Costs associated with undertaking internal reviews

In regards to internal reviews, it is assumed that approximately 1,500 complaints will be reviewed internally each year, with 5-10 per cent of these reviews being undertaken by the National Ombudsman. Assuming that each internal review requires a quarter of the resources required for the initial handling of the complaint, the estimated cost of the internal review function of the National Ombudsman is $56,800 a year.

Combining the costs of the complaints handling and internal review functions of the National Ombudsman yields an annual cost of $635,000.

4.4 National Register of Lawyers

As discussed in Section 3.4, it is proposed that a National Register of Lawyers be established. ACIL Tasman estimates that an online register would entail a one-off development cost of $214,000, with recurring costs of around

$550,000 per annum. These recurrent costs would cover hosting providers, staff developers, hardware and licences.

The estimated cost of establishing and maintaining a national register is thus $764,000 in the year when the system is set up and $550,000 per annum thereafter.

5 Results of cost-benefit analysis

This chapter presents the results of the cost-benefit analysis undertaken by ACIL Tasman on the National Legal Profession Reform proposals.

5.1 Summary of estimated cost and benefit effects

The real (that is, inflation-adjusted) costs and benefits of the regulatory changes discussed in the two preceding chapters of this report are summarised in Table 2.

Table 2 **Costs and benefits of National Legal Profession Reform proposals (in 2010 dollars)**

Regulatory item	Description of cost / saving	Year 1	Year 2	Year 3	Year 4	Year 5
Estimated costs (2010 $)						
National Board	Cost of main activities undertaken	3,465,365	2,905,701	2,905,701	2,905,701	2,905,701
National Ombudsman	Cost of main activities undertaken	634,821	634,821	634,821	634,821	634,821
National Register of Lawyers	Cost of developing and running the register	764,000	550,000	550,000	550,000	550,000
Total cost		**4,864,186**	**4,090,522**	**4,090,522**	**4,090,522**	**4,090,522**
Estimated savings (2010 $)						
Savings to regulators						
Rule setting	Saving from rule setting no longer being undertaken in the jurisdictions	286,720	286,720	286,720	286,720	286,720
Admissions	Saving from admissions assessment no longer being undertaken in the jurisdictions	2,448,174	2,448,174	2,448,174	2,448,174	2,448,174
Registration of foreign lawyers	Saving from registration of foreign lawyer no longer handled in the jurisdictions	83,401	83,401	83,401	83,401	83,401
Personal Indemnity Insurance	Saving from centralising and simplifying PII approvals	66,630	66,630	66,630	66,630	66,630
Trust Account inspections	Saving from fewer inspections due to fewer accounts	610,673	610,673	610,673	610,673	610,673
Complaints handling	Saving from streamlined complaints handling processes	2,211,388	2,211,388	2,211,388	2,211,388	2,211,388
Savings to law practices and legal practitioners						
Trust Account	Savings from operating one Trust Account	11,625,000	11,625,000	11,625,000	11,625,000	11,625,000
Other compliance costs	Saving from complying with uniform instead of disparate regulation	4,425,000	4,425,000	4,425,000	4,425,000	4,425,000
Total savings		**21,756,987**	**21,756,987**	**21,756,987**	**21,756,987**	**21,756,987**
Net savings		**16,892,800**	**17,666,464**	**17,666,464**	**17,666,464**	**17,666,464**

Data source: ACIL Tasman

The combined cost of the analysed proposals is $4.86 million in the first year of the regulatory reforms, which decreases to $4.09 million for each

subsequent year. The difference is due to the resources required to establish national rules and the set-up cost of the National Register of Lawyers.

Savings to regulators and to law practices and legal practitioners total $21.76 million each year. The net annual benefit of the proposed reforms is $16.9 million in the first year and $17.7 million thereafter.

5.2 Present value of costs and benefits

ACIL Tasman calculated the present value of the costs and benefits of the National Legal Profession Reform proposals over a 10-year time horizon, based upon the estimates of individual cost and benefit items shown in Table 2. The costs and benefits in Years 6-9 are assumed to mirror those in Years 2-5.

The present value (PV) of total costs over the 10-year time horizon under three alternative real discount rates is:

- $35.3 million (4 per cent discount rate)
- **$31.5 million (7 per cent discount rate)**
- $28.4 million (10 per cent discount rate).

The PV of total benefits over the 10-year time horizon under three alternative real discount rates is:

- $183.5 million (4 per cent discount rate)
- **$163.5 million (7 per cent discount rate)**
- $147.1 million (10 per cent discount rate).

5.3 Key results

The Benefit-Cost Ratio (BCR), obtained through dividing the PV of benefits by the PV of costs over the chosen time horizon, is calculated to be:

- 5.20 (4 per cent discount rate)
- **5.19 (7 per cent discount rate)**
- 5.17 (10 per cent discount rate).

That is, the stream of benefits in terms of compliance and regulatory cost savings made possible by the proposed reforms to the legal profession regulatory system is approximately five times that of the stream of costs associated with the reforms.

5.4 Sensitivity analysis

To test the robustness of the cost-benefit analysis results, ACIL Tasman undertook sensitivity analysis using Monte Carlo simulations (see Box 8). In

conducting these simulations, assumptions were made regarding the underlying statistical distributions of key parameters. The chosen statistical distributions are shown in Table 3.

Table 3 **Assumed statistical distributions of key parameters**

Parameter	Central estimate	Statistical distribution
Efficiency gain from centralising tasks at the National Legal Services Board	20%	Triangular (min = 0%, max = 40%)
Efficiency gain and cost reduction for legal practices from having only one Trust account	25%	Triangular (min = 0%, max = 50%)
Reduction in the number of Trust Account inspections under new regulatory system	10%	Triangular (min = 0%, max = 20%)
Reduction in the number of complaints requiring a lengthy resolution period after the establishment of the National Ombudsman	20%	Triangular (min = 0%, max = 40%)

Data source: ACIL Tasman

Based on the chosen statistical distributions for the key parameters, ACIL Tasman generated a 90 per cent confidence interval around the central estimate of the BCR (which, as reported previously, was 5.19 under a 7 per cent real discount rate). After 10,000 iterations using the Palisade @Risk software package, the 90 per cent confidence interval for the BCR was found to be (3.24, 7.22), as can be seen in Figure 2. That is, there is a 90 per cent probability that the 'true' BCR lies within this interval.

Box 8 **Monte Carlo simulations**

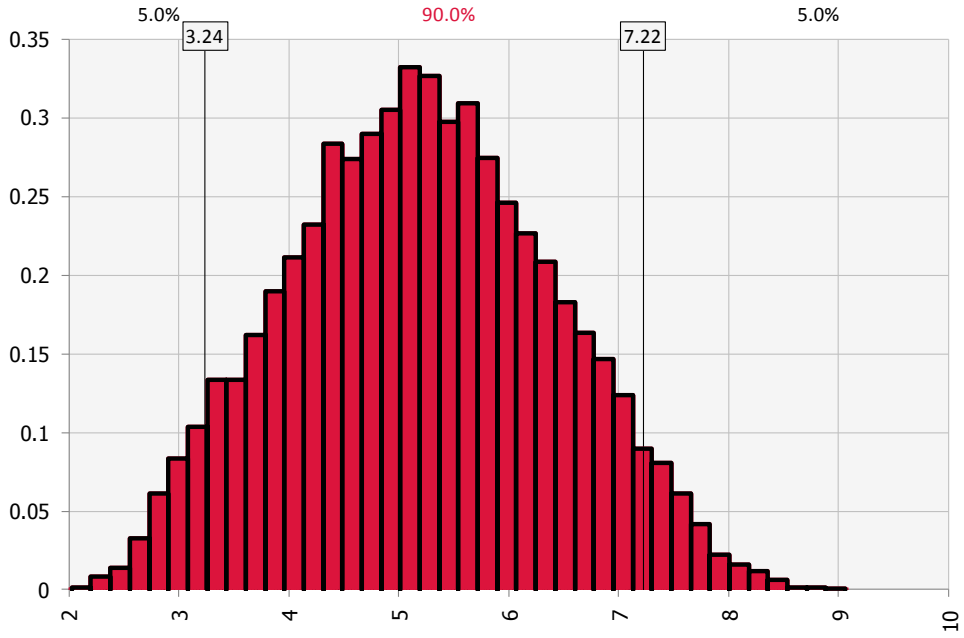
Monte Carlo simulation is a computerized mathematical technique that accounts for risk in quantitative analysis and decision making. The technique was first used by scientists working on the atom bomb; it was named for Monte Carlo, the Monaco resort town renowned for its casinos. Since its introduction in World War II, Monte Carlo simulation has been used to model a variety of physical and conceptual systems.

Monte Carlo simulation performs risk analysis through building models of possible results by substituting a range of values—a probability distribution—for any factor that has inherent uncertainty. During a simulation, values are sampled at random from the input probability distributions. Each set of samples is called an iteration, and the resulting outcome from that sample is recorded.

Monte Carlo simulation does this hundreds or thousands of times (depending upon the number of uncertainties and the ranges specified for them), and the result is a probability distribution of possible outcome values. In this way, Monte Carlo simulation provides a much more comprehensive view of what may happen. It shows not only what could happen, but also how likely it is to happen.

Source: Palisade Software

Figure 2 **90% confidence interval for BCR**



Data source: ACIL Tasman

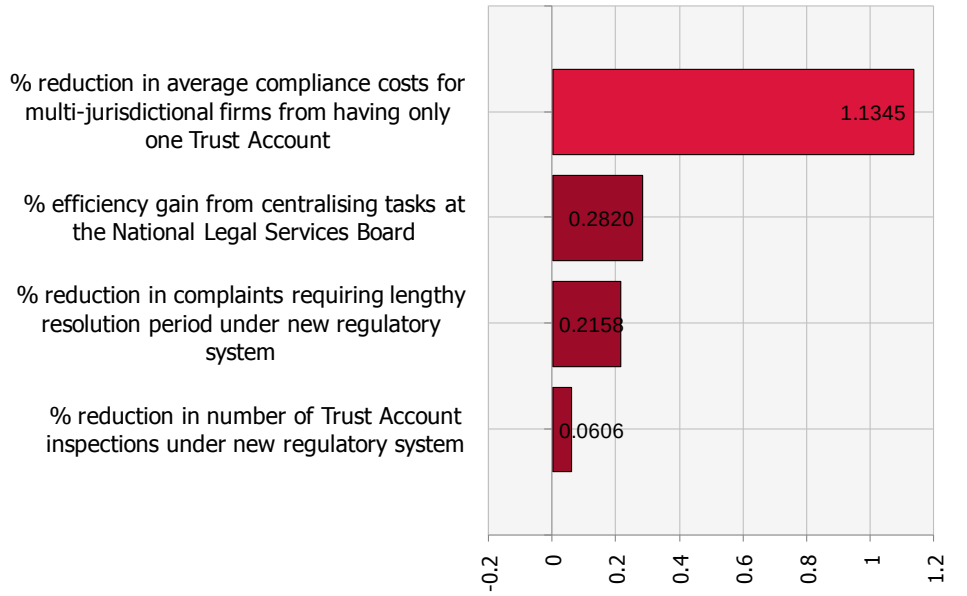
In addition, ACIL Tasman used the @Risk software package to generate Tornado diagrams that illustrate that relative importance of each assumption in determining the BCR.

As can be seen in Figure 3, the key assumptions in decreasing order of importance are:

- the average percentage reduction in compliance costs for multi-jurisdictional firms from having only one Trust Account
- the percentage efficiency gain from centralising tasks at the National Legal Services Board
- the percentage reduction in the number of complaints requiring a lengthy resolution period under the new regulatory system with the National Legal Services Ombudsman
- the percentage reduction in the number of Trust Account inspections under the new regulatory system.

Clearly, the most important assumption in determining the economic implications of the proposed reforms is the potential reduction in compliance costs for legal practices that operate in multiple jurisdictions from having a single Trust Account, instead of one in each jurisdiction that they operate in.

Figure 3 **Tornado diagram illustrating the impact of key assumptions on BCR**



Data source: ACIL Tasman

5.5 Intangible benefits

Section 5.1 summarised the tangible costs and benefits associated with particular regulatory reforms to the legal profession. In addition to these tangible costs and benefits, there are also intangible costs and benefits that are difficult (if not impossible) to quantify.

There are a number of aspects of the proposed reforms that would enhance consumer protection, and instil public confidence in the legal profession and, ultimately, the administration of justice, including:

- ensuring that complaints are determined independently from the profession
- providing for efficient and effective dispute resolution
- providing remedies for consumer issues that would not otherwise fall within the disciplinary system
- ensuring that fidelity claims are determined at arms' length from the profession
- ensuring that legal practitioners charge only fair and reasonable costs
- ensuring that consumers are initially informed, and kept informed, about the costs of the legal services being provided to them, and
- providing regulation that is simplified and therefore easier to understand.

There are also a number of aspects of the proposed reform that would reduce compliance costs, generate opportunities or enhance the reputation of the legal profession, including:

- establishing uniformity of all rules
- facilitating efficient complaint-handling and placing the emphasis on dispute resolution rather than discipline – this would save time for lawyers/practitioners who are the subject of a complaint
- facilitating choice for legal practitioners with respect to the form of business structure through which they wish to provide legal services
- enhancing the international competitiveness of Australian legal practitioners
- facilitating mobility for lawyers/practitioners who wish to move from one jurisdiction to another – not only due to benefits derived from a national admission and a national practising certificate, but also because those who move would not be required to learn the obligations and regulatory requirements of the new jurisdiction
- providing transparency in rule-making, and
- providing transparency in complaint-handling.

As noted, placing a financial value on the benefits of these aspects of the regulatory reforms is exceedingly difficult, if not impossible. However, just because they cannot be readily quantified, they should not be ignored. These intangible benefits suggest that the quantified benefits reported previously should be considered a relatively conservative estimate of the total benefits of the National Legal Profession Reform proposals.

6 Macroeconomic impact analysis

In this section, ACIL Tasman's Computable General Equilibrium (CGE) model, *Tasman Global*, was used to estimate the macroeconomic impacts associated the estimated benefits associated with the National Legal Profession Reform proposals will have on the Australian economy. It is designed to complement the cost benefit analysis by estimating some of the wider economic benefits associated with the reform proposals.

6.1 Methodology

Tasman Global is a large scale, dynamic, computable general equilibrium model of the world economy that has been developed in-house by ACIL Tasman. *Tasman Global* is a powerful tool for undertaking economic analysis at the regional, state, national and global levels.

General equilibrium models such as *Tasman Global* mimic the workings of the economy through a system of interdependent behavioural and accounting equations which are linked to an input-output database. These models provide a representation of the whole economy, set in a national and international trading context, using a 'bottom-up approach' – starting with individual markets, producers and consumers and building up the system via demands and production from each component. When an economic shock or disturbance such as an increase in a sector's rate of growth is applied to the model, each of the markets adjusts to a new equilibrium according to the set of behavioural parameters,[2] which are underpinned by economic theory.

In addition to recognising the linkages between industries in an economy, general equilibrium models also recognise economic constraints. For example, increased demand for labour may increase real wages if there is full employment.

A key advantage of general equilibrium models is that they capture both the direct and indirect impacts of economic changes, while taking account of economic constraints. For example, *Tasman Global* captures the expansion in economic activity driven by an investment, and at the same time accounts for the constraints faced by an economy in terms of availability of labour, capital and other inputs. Another advantage of general equilibrium models is that they capture a wide range of economic impacts across a wide range of industries in

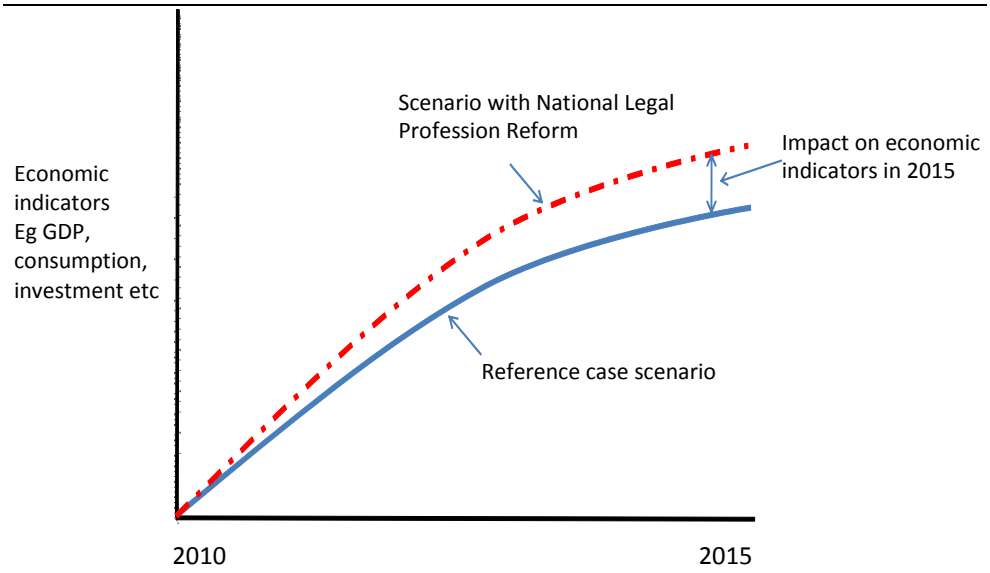
[2] An example of a behavioural parameter is the *price elasticity of demand* – the responsiveness of demand for a commodity to a change in the price of that commodity. Each of these markets – for example the market for a commodity or a factor such as labour or land or the market for capital goods – is then linked through trade and investment flows.

a single consistent framework that enables rigorous assessment of a range of policy scenarios.

6.2 Scenario description

In a CGE analysis the outcomes of the policy simulation modelled are reported as deviations from the business-as-usual reference case (see Figure 4). To eliminate the impact of price movements in the results, economic variables such as the change in Gross Domestic Product are reported as deviations from their real, rather than nominal, values.

Figure 4 **Scenario description**



Data source: ACIL Tasman Chart

For this study the business as usual reference case is the situation where the Australian economy grows in the absence of any changes related to the proposed National Legal Profession Reform. This reference case is then compared to the alternative policy scenario where the costs and benefits identified and discussed in Sections 3, 4, and 5 are incorporated. The difference between the policy scenario and the reference case provides an estimate of the economic benefits that National Legal Profession Reform proposals may have on the Australian economy.

As the majority of the benefits identified with the National Legal Profession Reform proposals are associated with reducing the amount of time spent by legal professionals and support staff, the identified benefits have been modelled as a labour productivity improvement in the provision of legal services. Given that labour is the major input into the provision of legal

services, this simplification is not considered important compared to the uncertainties surrounding the estimation of the potential benefits.

To isolate the economic impacts of productivity improvements associated with the implementation of the National Legal Profession Reform proposals within the Australian economy, all other settings in *Tasman Global* have been held constant across the scenarios (including population, labour supply, unemployment rates, tax rates, natural resource supplies and all other productivity improvements).

6.3 Results of the CGE analysis

The results for the modelled scenario are presented in Table 4. The proposed National Legal Profession Reform is projected to increase Australian real GDP by around $23.6 million in the first year of implementation increasing to around $25.2 million by the fourth year.

As presented in Table 4, a ±30 per cent sensitivity of the projected benefits associated with the National Legal Profession Reform proposals translates into approximately a ±30 per cent impact on the projected real GDP benefits. In particular, the Reform proposals are projected to increase Australian real GDP by some $18.0 million in 2014-15 under the low benefit scenario and almost $33 million under the high benefit scenario.

Table 4 **Macroeconomic impacts of National Legal Profession Reform proposals (2010 A$ million)**

	2010-11	2011-12	2012-13	2013-14	2014-15
Change in value added	3.79	4.13	4.26	4.40	4.50
Tax revenue changes	3.29	3.53	3.62	3.69	3.74
Productivity effects	16.53	17.21	17.11	17.15	17.01
Total change in real GDP (income side)	**23.61**	**24.87**	**24.99**	**25.24**	**25.24**
Change in real GDP – Low	16.58	17.59	17.71	17.96	17.96
Change in real GDP – High	30.65	32.28	32.40	32.65	32.65

Data source: ACIL Tasman modelling estimates

The projected benefits are driven by the estimated productivity improvements in the legal sector of the Australian economy. The productivity improvements will result in improved use of Australia's scarce labour supply and allow the economy to increase overall output compared to what will otherwise be possible.

Changes in real GDP can be analysed in more depth by decomposing the impacts into the changes in value added, tax revenues and productivity effects). As shown in Table 4, in 2014-15 around two-thirds of the increase in real GDP is directly associated with the estimated productivity improvements, 15 per

cent is associated with increased net tax revenues due to increased economic activity. The remaining 18 per cent of the increase in real GDP is due to increased real returns from factors, which results from higher accumulated capital stocks and allocative efficiency benefits associated with the reallocation of factors around the economy (note that the supply of land, labour and natural resources were assumed to be the same across all scenarios).

7 References

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