

The Law
Society
OF TASMANIA

Senate Legal and Constitutional Affairs Committee
Budget Estimates 2010-11, 24-27 May 2010

21 May, 2010

Tabled Document No. 1
By: Senator Barnett

Date: 24/5/10

Senator Guy Barnett
33 George Street
LAUNCESTON TAS 7250

Dear Senator

Re: National Legal Profession Reform

The National Legal Profession Reform Taskforce ("Reform Taskforce") has presented a draft Legal Profession National Law and Legal Profession National Rules to COAG which have been released for public comment.

COAG has agreed to a consultation period of three months to allow for some discussion on the proposed reforms.

The Law Society of Tasmania is considering the draft legislation and will in due course arrive at a position. At the outset, can I state that the Society supports the proposal for reform generally even though we have just undergone an exhaustive reform of legal practice in Tasmania.

However, there are some aspects of the proposal of significant concern. Can I assume that you have a copy of the Consultation Package dated 14 May, 2010? According to the Reform Taskforce the key themes underpinning the Taskforce's reform proposals were (see page 1 of the Forward of the Consultation Report April 2010):

- the creation of a national regulatory framework
- the establishment of an Australian legal profession
- a reduction in the regulatory burden for Australian legal practitioners and law practices
- enhanced consumer protection
- maintenance of the independence of the legal profession (

Any reading of the proposed reforms would suggest that the maintenance of the independence of the legal profession is far from their mind. In fact, we see the Reform Taskforce challenging the independence of the legal profession by transferring that independence to the Executive.

We hold the view that the independence of the legal profession, and therefore the judiciary, is a fundamental part of the Rule of Law. There is no better example of what we are saying than the proposal in Schedule 1 of the Legal Profession National Law.

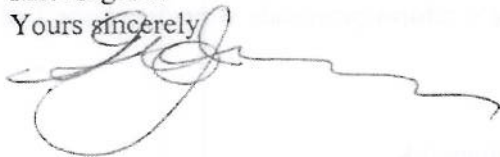
It is proposed that members of the National Legal Services Board ("Board") be appointed by SCAG with minimal input from the legal profession. Even the Chairperson is to be appointed by SCAG. I attach a copy of a letter from the Honourable Chief Justice of Tasmania to the National Legal Profession Reform Taskforce dated 14 May, 2010 expressing his concerns about this. The learned Chief Justice describes this proposal as "... an insult to the profession and confirms an intention to reject the need to maintain its independence". The Chief Justices from all Australian jurisdictions have written to the Attorney-General expressing the same view.

The Society believes that the majority of the Board should comprise of members of the profession appointed by the profession. One or two members of the Board should be experienced in general legal practice of the type carried on by the majority of legal practitioners in Australia i.e. small legal practice in suburban or regional and rural Australia. This should not be reform simply for the benefit of large law firms in major cities.

We are also concerned about the cost of the proposed regime. The ACIL Tasman Report on the Costs Benefit Analysis of the Proposed Reforms to the National Legal Profession Regulation dated March, 2010 appears defective as there is no basis for determining the cost of the proposed regime. We have no confidence with the suggestion that the new structure will be "cost neutral" i.e. will not cost the profession nor clients any more than the current system. Whilst large law firms may be able to carry additional costs, we doubt that legal practitioners in suburban or regional and rural Australia will be able to carry further financial burden, bearing in mind that the profession is facing difficulties in servicing communities in those areas of Australia in any event. In reality the proposed reform does little for those practitioners.

I hope you find these comments useful.

Kind regards
Yours sincerely



GRAEME L. JONES
PRESIDENT

14 May 2010

National Legal Profession Reform Taskforce
C/- Attorney-General's Department
3 - 5 National Circuit
BARTON ACT 2603

Dear Sirs

Re National Legal Profession Reform

The Taskforce will be holding a stakeholder meeting in Hobart on 24 May. Unfortunately, I will be unable to attend that day because it coincides with overseas travel arrangements I have made while on leave. For that reason, I am writing this letter.

I support the proposal for reform generally. State and Territorial laws present needless barriers to the practice of law in this country. The establishment of an Australian legal profession without those barriers is clearly desirable.

However, there is one aspect of what is proposed that I find of great concern. Notwithstanding the statement in the Foreword to the Consultation Report April 2010 that one of the key themes underpinning the Taskforce's reform proposals is the maintenance of the independence of the legal profession, a consideration of what is proposed suggests that is not the case.

The maintenance of the independence of the professional from the executive should be an objective of the proposal. Yet that need is denied by provisions that:

- the members of the National Legal Services Board will be appointed by SCAG with an extremely minor input from the profession;
- the Chairperson of the Board will be appointed by SCAG;
- SCAG must approve the appointment by the Board of its chief executive officer; and
- the Board will be subject to, and must comply with, any directions on policy matters given by SCAG.

It is proposed that the profession, through the Law Council of Australia, will have only one nominee on the seven member Board. Even then, it will be required to nominate three persons out of which SCAG will select one. That proposal is an insult to the profession and confirms an intention to reject a need to maintain its independence.

I add that I am unaware of any argument to justify the proposal that the Council of Chief Justices must also nominate three persons for SCAG to approve of one. It is troubling to me that there is revealed a lack of respect for the Chief Justices and their ability to select a suitable appointee.

However, I do not see that there is a need for the Chief Justices to be involved in the appointment process at all. What is required, to maintain the independence of the legal profession, is that the majority of the Board should be members of the profession and over half of them should be appointed by the profession, perhaps by the use of the Law Council of Australia, Australian Bar Association and some other sections of the profession.

Greater recognition of the independence of the profession is to be found in the Tasmanian *Legal Profession Act 2007*, s590, which provides for the Legal Profession Board of Tasmania to consist of six members appointed by the Governor. Three are nominated by the profession and three are nominated by the Attorney-General. They are:

- two legal practitioners nominated by the Law Society;
- one legal practitioner nominated by the Bar;
- one legal practitioner nominated by the Attorney-General; and
- two persons nominated by the Attorney-General who are lay persons and who have not completed the degree of Bachelor of Laws or equivalent.

As a result, four of the six members of the Board are members of the profession. The Board appoints its Chairperson from among its members. It is not subject to policy direction from the executive.

I urge a reconsideration of the provisions relating to the National Legal Services Board.

I consent to the publication of this letter on your website.

Yours faithfully

Ewan Crawford
Chief Justice of Tasmania