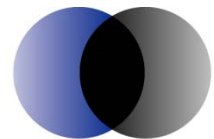




Cost Benefit Analysis of Proposed Reforms to National Legal Profession Regulation

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:

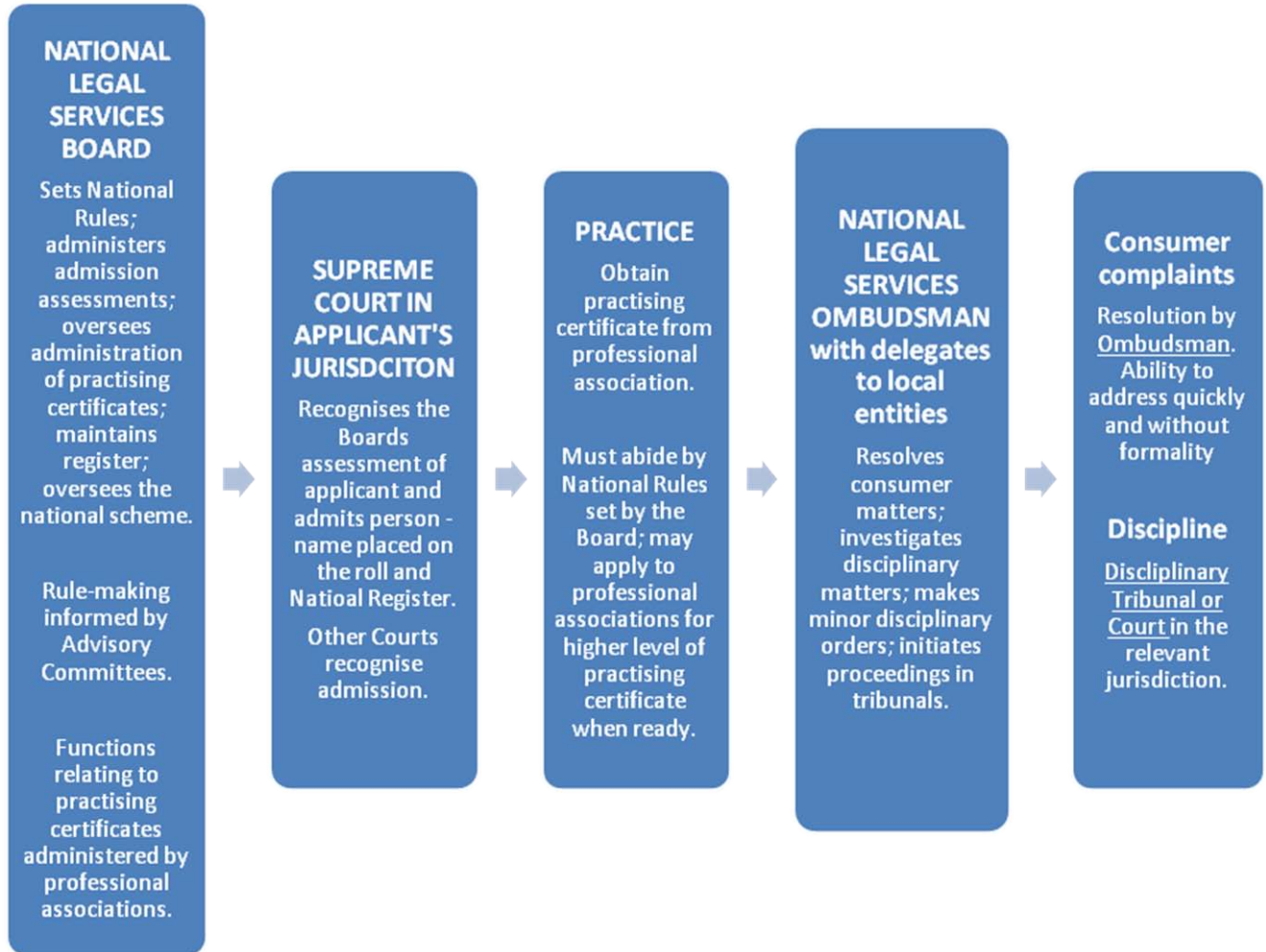
- grant, vary, amend, suspend and renew practising certificates
- undertake or manage compliance functions, including trust account inspections and investigations of trust accounts, external interventions and compliance audits
- receive, handle and resolve complaints and initiate disciplinary proceedings
- 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 than prescribing 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 portal¹ – [lportal.org.au](http://portal.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**

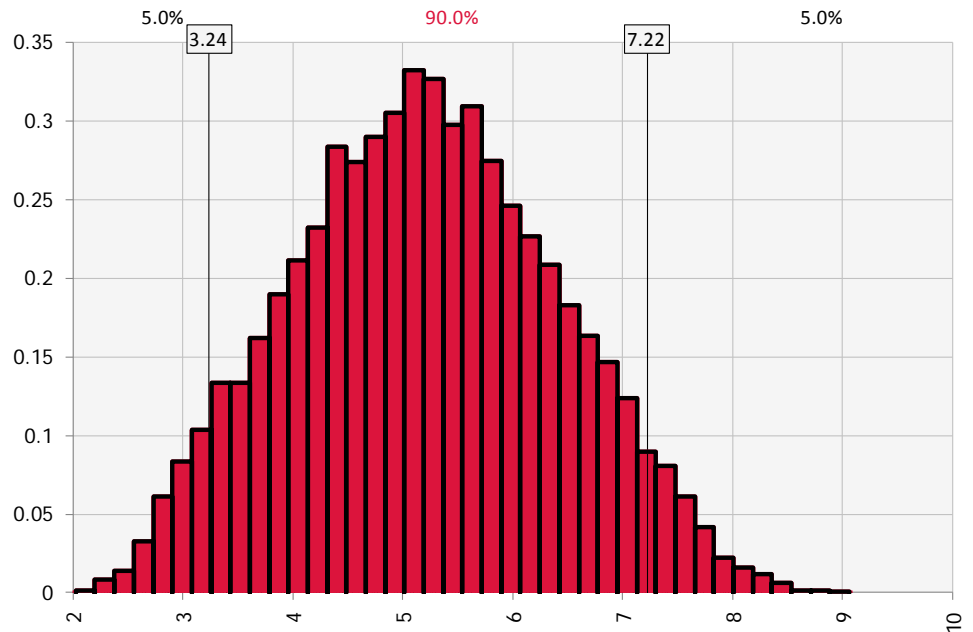
Monte Carlo simulation is a computerized mathematical technique that accounts for risk in quantitative analysis and decision making. The technique was first used by scientists working on the atom bomb; it was named for Monte Carlo, the Monaco resort town renowned for its casinos. Since its introduction 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

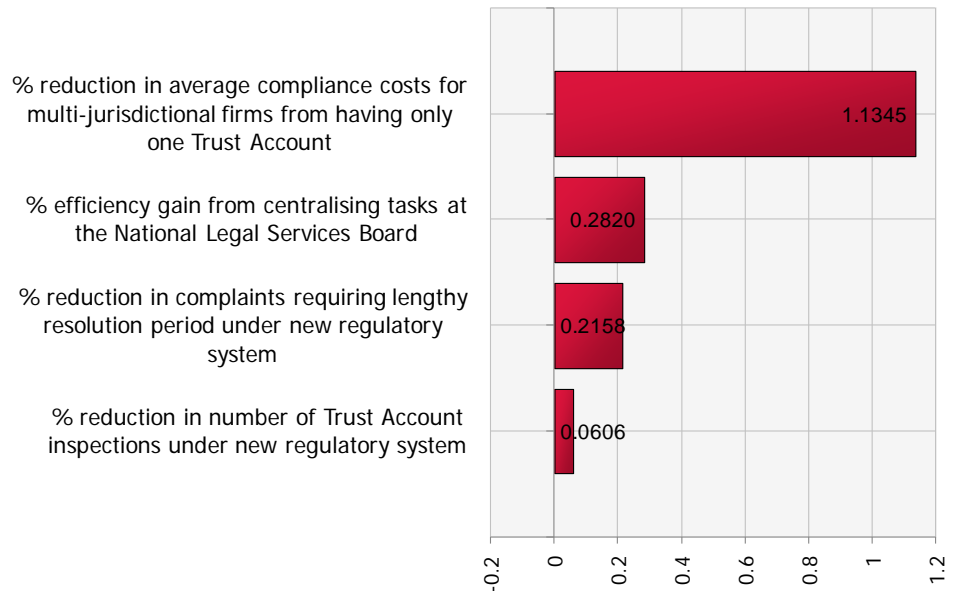
In addition, ACIL Tasman used the @Risk software package to generate Tornado diagrams that illustrate that relative importance of each assumption in determining the BCR.

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

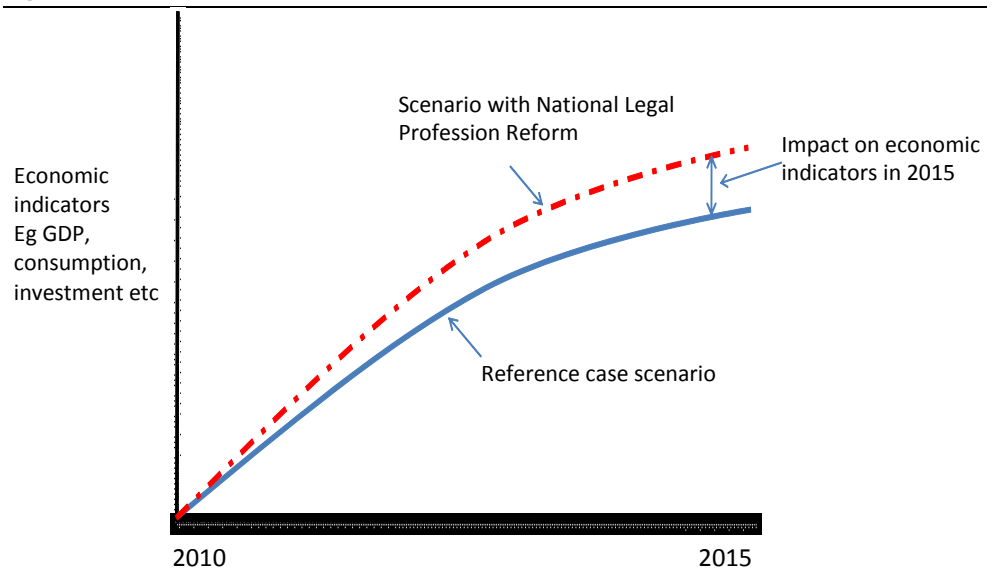
² An example of a behavioural parameter is the *price elasticity of demand* – the responsiveness of demand for a commodity to a change in the price of that commodity. Each of these markets – for example the market for a commodity or a factor such as labour or land or the market for capital goods – is 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



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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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