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For immediate release

media release

Reforms to legal profession undermine rule of law

The Rule of Law Association of Australia today made comment on the draft legal profession legislation released by COAG. Under these reforms the legal professional will be subject to national regulation.

RoLAA is an independent non-profit association formed to uphold the rule of law in Australia. RoLAA was established in September 2009 with the following objectives:

- To foster the rule of law in Australia.
- To promote good governance in Australia by the rule of law.
- To encourage truth and transparency in Australian Federal and State governments, and government departments and agencies.
- To reduce the complexity, arbitrariness and uncertainty of Australian laws.
- To reduce the complexity, arbitrariness and uncertainty of the administrative application of Australian laws.

RoLAA Vice President, Malcolm Stewart, today said “RoLAA believes that this draft policy conflicts with rule of law principles, especially the long established principle of the need for an independent legal profession whose primary duties are to the client and the court.”

The legislation will regulate every member of the legal profession, who number nearly 100,000 nationally, including lawyers and barristers. It is a rule of law and ethical requirement that the legal profession remains independent. Until now, the profession has been regulated by state law societies, bar associations and, where necessary, government regulators. RoLAA recognises that

the creation of a national legal profession removes much of the red tape and over- regulation that currently exists, and in-principle supports the initiative.

The proposed National Legal Services Board (NLSB) would set common national standards for the legal profession on issues such as admission, complaints and practising certificates. However, the proposed legislation creates a significant issue for the independence of the profession in that under the new regime there will be a NLSB whose members are appointed by the Council of Attorneys-General and the Attorney-Generals' Standing Committee. This will mean that the executive arm of government will effectively be regulating the officers of the court via the NLSB. The host Attorney-General can terminate a NLSB member's appointment, and no appeal process is specified. The Standing Committee also has the power to veto proposed rule suggestions agreed by the NLSB.

In addition, RoLAA believes that the proposed Ombudsman's position as currently structured will effectively be an instrument of the executive arm of government, as the Ombudsman can be appointed as well as terminated, without a specified appeal process, by an act of the executive. The Ombudsman is to be accountable to the Standing Committee. If there is to be an Ombudsman then the termination powers should be in the hands of the Federal Parliament by way of a motion of both houses. Whilst the proposed Bill states that the Ombudsman is independent of the Attorney-General, RoLAA believes that the vesting of appointment and termination powers in the Attorney-General, means that the independence is in name only.

"The rule of law will not prevail without assuring the law's principal actors - judges and practicing lawyers and also legal academics - a very high measure of independence of mind and action...Independence is not provided for the benefit or protection of judges or lawyers as such. Nor is it intended to shield them from being held accountable in the performance of their professional duties and to the general law. Instead, its purpose is the protection of the people, affording them an independent legal profession as "... the bulwark of a free and democratic society" - Hon Justice Michael Kirby, 2005 speech 'Independence of the legal profession: Global and Regional challenges'.

RoLAA calls for a change in the draft Bill to allow members of the legal profession to nominate NLSB members from within the ranks of the profession, and the nominees from the profession should constitute a clear majority on the NLSB. RoLAA will be making a submission along these lines to the National Legal Profession Taskforce.

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