



**THE LAW SOCIETY
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

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13 August 2010

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Mr Roger Wilkins AO
Chairperson
National Legal Profession Reform Taskforce
Attorney-General's Department
Canberra ACT 2600

Dear Sir

National Legal Profession Reform Project – Consultation Package

The Law Society of South Australia notes the submissions made by the Law Council of Australia on the Consultation Package released on 14 May 2010 and fully supports the majority of its recommendations. However there are a small number of discrete areas that the Society wishes to draw to your attention. These are identified in the Appendix to this letter.

In addition, we make the following comments on the consultation package. One of the stated aims of the project was to reduce the regulatory burden on the profession and thereby produce cost savings to fund the proposed new regulatory regime and reduce the cost of legal services to consumers. It is extremely disappointing that the consultation package has not been supported by costings (despite repeated calls for this to occur). Our analysis has led us to conclude that far from generating savings it has the potential to significantly increase the cost of practice to practitioners in South Australia. Although we strongly support the concept of a "National Profession" and the obvious benefits of the decreased regulatory burden we do not support a model that only achieves this at an increased cost to practitioners. Practitioners who do not have a multi-jurisdictional practice will not benefit in a direct sense from a "National Profession". Any increased costs incurred by practitioners will inevitably flow on to consumers of legal services. Our ongoing support for this project is therefore contingent on proper costings being provided on any model that the Taskforce chooses to move forward with.

You will note the Law Council's submission on the composition of the National Legal Services Board. The Society supports the submission made concerning the independence of the profession and the inappropriateness of the proposed role of SCAG (or any similar Governmental influence). We note the comments of the "consumer lobby" however we have not seen, nor are we aware of, any evidence that the regulation of the profession by the profession to date has had an adverse effect on the nature, quality and cost of legal services. We believe that the majority of the members of the proposed Board should continue to be representative of the broad profession across the country.

We support the Law Council's submission in respect of the proposed Ombudsman. Whether the concept of an "Ombudsman" remains or its proposed functions are performed by the Board and/or delegated, we support the Law Council's submission concerning the intrusive nature of the proposed regulation of the profession.

In addition to the Law Council submission, the Society remains concerned about issues such as the proposed limitation of "uplift fees" to 25% (as we see this as having a real impact on access to justice) compensation orders, centralised admissions, liability of principals, and the potential for firms to "forum shop" for PI Insurance and its likely impact on smaller State based schemes. On this topic, please refer to the submission of Lawguard Management Pty Ltd which we have forwarded separately, and which the Society fully supports.

On the topic of penalties, the Society does not believe that the penalty framework in the proposed National Law strikes any kind of sensible or appropriate balance between conduct that should be treated as a disciplinary matter and conduct that warrants a civil or criminal penalty. The framework of penalties imposed by the Taskforce for breaches of the National Law and National Rules must be re-considered.

The Society submits that some matters currently the subject of proposed "rules" should be entrenched in legislation. In particular, we refer to the proposed rules relating to:

- Business structures;
- Fidelity cover;
- External intervention.

We note that the formula for the proposed redistribution of trust account interest has not yet been released for consultation and the Society is particularly concerned about the possible impact on the funding of organisations such as the Legal Service Commission in this State if there is not an appropriately calculated return to this State from State generated trust income.

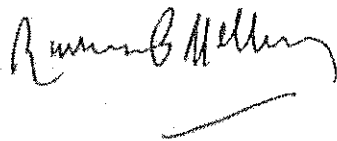
In light of the extensive nature of the Law Council submission the Society strongly believes that the only possible way that this project can "move forward" is for a further draft of any proposed model to be released for further consultation supported by soundly based costings.

In passing we note that there are a considerable number of drafting "errors"; inconsistencies (for example in definitions), typographical errors etc in the draft legislation which we understand will be provided to the Taskforce's Working Group by the Law Council. We have provided extensive input to the LCA on these matters.

We thank you for the opportunity to comment and look forward to having further input.

If you have any questions in relation to this submission please contact the Executive Director, Mrs Jan Martin (Tel: 08 8229 0236; Email: jan.martin@lawsocietysa.asn.au).

Yours sincerely



Richard Mellows
PRESIDENT

Section 2.2.5(1)(c) - Conditional admission of foreign lawyers

The Society strongly opposes section 2.2.5(1)(c) on the basis that "admission" requires the completion of academic and practical training. A person cannot be "half" admitted. They are either admitted or not. It is not feasible to be "admitted" and at the same time be required to do particular academic or legal training. This would place a "foreign lawyer" in a better position than other applicants for admission, who must have the necessary academic qualifications and practical training prior to being admitted.

Section 4.2.10(2) - Single national trust account – choice of jurisdiction in which it may be maintained

As currently drafted, the legislation has the potential to seriously affect the Fidelity Funds of smaller States. It is therefore the Society's firm view that for a law practice that elects to operate a single national trust account, that account should be located in the jurisdiction in which the majority of the principals of the firm holding an Australian Practising Certificate, at 31 December preceding, practise. This position is consistent with the "permanent office" test and the requirements for renewal notification for Professional Indemnity Insurance.

Section 4.2.10 (5) – General trust account for more than one jurisdiction

The Society is opposed to the LCA submission on this section and supports the legislation as drafted, i.e. that if a firm elects to operate a single trust account then it cannot operate another general trust account [4.2.10(5)]. The LCA submission will have catastrophic consequences for the Fidelity Funds of smaller jurisdictions.

Section 4.4.4(4) - Where and how professional indemnity insurance is to be obtained

The Society notes the separate submission of Lawguard Management Pty Ltd (provided by the Society by separate letter of 13 August 2010) and adopts the recommendations therein.

The Society therefore recommends that the "permanent office" test in Section 4.4.4(4) be the jurisdiction where the majority of the principals of the firm, holding an Australian Practising Certificate, at 31 December preceding, practise.

Regulatory bodies would need to receive notification of the jurisdiction "chosen" under 4.4.4(3), prior to renewal negotiations, i.e. at least six months prior to the new insurance year.

National Rule 7.2.10 - Method of payment

The LCA response recommends that Rule 7.2.10 be amended to "allow for a written" authorisation by a principal to the law practice's bankers to direct debit the trust account.

This may be an administrative convenience but purchasing of bank cheques or arranging telegraphic transfers can be arranged using a trust cheque. The direct debit practice as it relates to trust accounts can provide an easier opportunity for abuse with consequences for clients, the practice and fidelity funds. It also provides a poorer audit trail. If any form of direct debit is to be permitted then it should only be with the explicit approval of the Regulator

APPENDIX to the Law Society of South Australia's submission to the National Legal Profession Reform Taskforce on the Legal Profession National Law proposal of 14 May 2010

and upon specific conditions determined by the Regulator and ideally there need to be provisions within the Rules for the Regulator to impose conditions [eg in the SA Revnet system].

Rule 7.2.10 should therefore be amended to permit law practices to obtain specific approval to utilise direct debits against their trust account on such conditions as the local Regulator imposes.