

Legal Profession Uniform Law in operation – an update CORO 2015

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The sum is greater than that of the parts

Outline – The Legal Services Council and Commissioner

- Overview of the Uniform Law
- Review the last 12 months
- Minor adjustments, Act and Rules
- Notable aspects – working together
- Legal Costs

Outline - The Legal Services Council and Commissioner (contd)

- Some early signs
 - costs disputes and consumer complaints
 - Rules process
 - Guidelines
 - Law Firm Audits and Management Systems Directions
- How much is it costing?
- What else has been achieved?
- Information sharing?
- The Admissions Committee
- Future work?

Key points about the Uniform Law

- The key to the LPUL's intent is in its Objectives clauses. Importantly -
 - enhancing the protection of clients of law practices and the public generally
 - empowering clients to make informed choices about the services they access and the costs involved
- Uniform Law does not depart significantly from the Legal Profession Acts it replaced but applies in multiple jurisdictions

Key points about the Uniform Law (contd)

- Arrangement of local regulatory authorities - a matter for the jurisdictions, not for the Council or the Commissioner or the Uniform Law itself
- No valid conclusions about the economic efficiency or effectiveness of the Uniform Law scheme itself can be drawn on how a particular jurisdiction organises local regulatory functions

Review of the 12 months since 29 September 2014

Rules preparation

- Ministers set 1 July 2015 commencement target date in October 2014
- Pre commencement assistance on drafting instructions for rules by lawyers from VLSB+C gave LSC a flying start
- **Focus was on preparing rules to enable the scheme to operate, not on every rule that could be made under the Uniform Law**
- 2010-11 draft rules prepared by the COAG Task Force helped, but were not simply transferable

Review of the 12 months since 29 September 2014 (contd)

Rules preparation

- Arrangement with NSW and Victoria's Offices Parliamentary Counsel - drafting the Council's general Uniform Rules; light touch review of other stakeholder-contributed rules
- **The result - a set of rules that are drafted to a standard which is fit for purpose as rules for the Australian legal profession**

Review of the 12 months since 29 September 2014 (contd)

Rules preparation

- Consultations timetable in October 2014 to meet 1 July 2015 target
- General Uniform Rules, Admission Rules, Barristers Conduct and CPD rules released for comment about 28 November 2014, for comment by 16 January 2015
- **Comments were being made and considered into February 2015 on some aspects**

Review of the 12 months since 29 September 2014 (contd)

- Consultations were broadly based, including all Chief Justices, Attorneys General, Law Societies and Bar Councils, consumer bodies and the public – over 130 persons or bodies invited to comment Australia wide
- Admissions Committee - strong efforts to maintain broad consistency with all other jurisdictions
- **The Council tried where ever possible to act positively on all submissions made, including from non-participating jurisdictions**

Review of the 12 months since 29 September 2014 (contd)

- LCA and ABA in particular made strong efforts to maintain consistency with Conduct Rules with other jurisdictions
- LCA received many comments on ASCRs but deferred acting on most until a subsequent review by it takes place
- LSC supported this stance for practical purposes

Review of the 12 months since 29 September 2014 (contd)

- Minor editorial changes were suggested by Parliamentary Counsel to improve some of the Rules submitted and were adopted
- All Rules were submitted as required to the Standing Committee of the two Attorneys General on 28 April 2015

Review of the 12 months since 29 September 2014 (contd)

- On 12 May 2015 Council withdrew a proposed uniform General Rule precluding recovery of an amount in a later itemised bill greater than the amount in a lump sum bill. **Substituted new rule permitting this if the law practice disclosed that the itemised bill might be higher, and if costs are assessed**
- Understood to be consistent with Queensland practice
- On 25 May Standing Committee approved of all Rules
- On 26 May Legal Services Council formally made all of the Rules, LCA, ABA and Admissions Committee rules

Review of the 12 months since 29 September 2014 (contd)

- On 21 June 2015 - 3 urgent changes made to the Uniform Rules
 - **Amended rule 52(b) trust account statement need not be provided where the account has been open for less than 6 months, rather than 12**
 - **Corrected an incorrect rule reference in rule 66(1)**
 - **Corrected a minor mis-description of the VLAB**

Minor Adjustments to the Act and Rules

- Victoria (jurisdiction for the law) – amended s174 re cost disclosure form for matters under \$3,000 in early 2015; plus certain other changes
- Demonstrates flexibility of process for amending the law or rules quickly
- **Outline of pre 1 July 2015 actions demonstrates the ability of the Uniform Law scheme and Council to take account of stakeholder feedback and to make adjustments as necessary**

Minor Adjustments to the Act and Rules (contd)

- NSW replicated changes to the Uniform Law in June 2015
- Currently working on rules changes re
 - supervised legal practice
 - anti voiding
 - remove the need for receipts on zero balance trust accounts in certain circumstances
- Process for altering Act or rules for both States is relatively quick and flexible, compared with previous arrangements in both states

Working together

- Concept of collaboration for the implementation and operation of the Uniform Law is entrenched in LPUL structure
- Framework calls for contributions from the LCA, the ABA and the profession influenced the Admissions Committee in the rules proposal and making process
- Legislated consultation processes and timeframes called for in Part 9.2 and s's 425-430
- The Council and Commissioner see it as of fundamental importance to consult widely and attempt to do so

Working together (contd)

- Various working parties, consultative meetings and forums held and will continue
- For example
 - Meetings of Commissioners
 - Implementation working parties
 - Regular ad-hoc meetings with key stakeholders
 - Consistency working meetings will continue
 - Meetings concerning possible Admissions Guidelines or Directions

Working together (contd)

- Meetings on s18 (exemption from academic or PLT requirements) and s20 (conditional admission of foreign lawyers)
- LSC Consultative Forum – first Forum 20 November 2015
- Liaison and collaboration not limited to and does not need to involve the Council or Commissioner
 - for example, in Victoria the VLSB+C and the LIV have recently agreed on a better risk based model for selection of law practice trust accounts to be audited

Working together (contd)

- Co-regulatory arrangement and high degree of co-operation and good will demonstrated - very positive multiplier effects on the Uniform Law Schemes operation

Legal Costs

- Costs provisions don't apply to commercial and government clients
- Costs disclosure and costs estimates not new
- Keeping clients informed about costs and changes is key for law practices - reflects Uniform Law objectives
- There was a great deal of interest in the Standard Costs Disclosure form for s174(5) pre commencement. Extensive consultations occurred

Legal Costs (contd)

- Simple, easy to use costs disclosure form works for matters not exceeding \$3,000
- Compliance with the costs disclosure obligations in s174 aroused great interest
- Guidance being issued on estimates
- New rule is being made to facilitate and encourage compliance to address concern about the effect of voiding of costs agreements under s178(1)

Some Early Signs

Complaints – about 50% of all complaints about lawyers relate to costs

- Victoria consumers no longer have to put disputed funds into trust before complaint considered
- First issue for regulator - have the parties try to resolve the complaint first
- Met with approval from lawyers (for giving them the chance to sort things out with their client first)
- Clients have expressed satisfaction with the process and for the background presence of the regulator

Some Early Signs (contd)

- In both States, a significant proportion of all costs complaints since 1 July 2015 resolved with either minimal involvement by regulators or using Chapter 5 powers, including some conciliation and mediation
- If disputes can't be resolved, pre-existing expert mechanisms, such as the NSW Supreme Court Cost Assessment Scheme continue to operate
- The Rules making (or amendment) process is functioning well and is working comparatively quickly. Minimal overall change needed

Some Early Signs (contd)

- Guidelines for DLRA's – more work being done. Process is flexible and amount of consultation needed can be tailored
- Law firm audits and management system directions - not needed for the vast majority of well run law practices
- For smaller firms – it's hard to afford systems managers or advisers, HR staff or finance and accounting or other support but obtaining such advice might be desirable

Some Early Signs (contd)

- Legal Services Commissioners can assist using their auditing power, provided reasonable grounds exist providing real help and practical assistance
- Help can come in the form of mentors, practice advisers, assistant managers and supervisors – practice regains its operational health and restores client confidence in the business
- Possibility of real interest and assistance from State regulators - something that practices from Tweed Heads to Tallangatta and from Bairnsdale to Broken Hill can expect, even if this is needed infrequently

Scheme Costs

- Small organisation (4 staff, including CEO/Commissioner)/ part-time monthly voluntary Council
- Use NSW Government corporate services to minimise cost
- 2014-15 (part-year) budget = \$611,686 + in-kind assistance from LSNSW and VLSB+C
- 2015-16 (full-year) budget = \$1,344,521
- Contributions based on number of practitioners in participating jurisdictions
- Additional staff may be needed should others join
- LSC with the assistance of host Governments can readily provide figures for other State contributions when requested

What has been achieved

- Business and Strategic Plan prepared; later adopted by the Council
- Four key result areas
 - Drive strategic initiatives that embed reform and respond to emerging issues and opportunities
 - Develop fit for purpose rules, policies and procedures
 - Undertake highly effective stakeholder engagement and communication
 - Build a well governed organisation

What has been achieved (contd)

- Six monthly reporting to Standing Committee
- PII minimum standards negotiated and adopted
- Various priority issues raised by the Standing Committee for Council resolved including e.g.
 - The costs assessment process proceeding in the absence of a party who does not attend
 - Exemption from PC requirements for certain senior Government office holders

What has been achieved (contd)

- Budget and a Governance framework for the Council and Commissioner established
- Suitable office accommodation for the Council Secretariat set up
- Strong liaison and consultation arrangements set up
- The LSC Chair and Commissioner - visited a number of jurisdictions and plan more
- A web site established - recently refreshed
- Information Sheets published and available on the Council web site

Information Sharing

- s440 of the Uniform Law - the Council, Commissioner and local regulatory authorities each to ensure that information is exchanged between them
- A major focus of Secretariat activity over the coming months
- All stakeholders show great willingness to assist consistently with the excellent co-operation experienced to date in all other respects
- In the medium to longer term of great benefit if all other jurisdictions join in this too, whether or not they adopt the Uniform Law

The Admissions Committee

- The Committee - supported administratively by the Council Secretariat, operates semi-autonomously under the leadership of Chair, Professor Clark but also under the LSC framework
- The Committee meeting of March 2015 adopted final draft of proposed Admission Rules with minor amendments made in the light of consultation

The Admissions Committee (contd)

- The Committee - identified from a number of policy issues for resolution four topics to look at as a matter of higher priority
 - whether the Uniform Standards for PLT and Providers should be the subject of an LSC Guideline, (noting the continuing currency of these Guidelines)
 - Foreign Lawyers Working Group formed to consider the LACC Common considerations relevant to experienced practitioners

The Admissions Committee (contd)

- The Foreign Lawyers Working Group is also considering possible Interim Principles for Admitting Applicants Relying on Qualifications, Skills or Experience Obtained Outside Australia; and
- a possible Health Assessment Policy
- Work being undertaken on more precise guidance on stale qualifications
- Professor Clark will provide further information later in the Conference

Future work of the Council

- Various policy issues to consider
 - for example, the possibility/desirability of a single national trust account
 - whether partnerships of incorporated legal practices should be permitted under the Uniform Law
 - options analysis for an Australian Legal Profession register
 - managed investment scheme – consideration pre 1 July 2018

Future work of the Council (contd)

- Settling data collection and sharing arrangements
- Establishing a framework to monitor dispute resolution and professional discipline functions of DLRAs
- Working with the Admissions Committee and admitting authorities to monitor conditions on Admissions
- Working with the Admissions Committee on guidelines or directions from s18 and s20
- Ad hoc attention to Rules, policies, directions and guidelines, as requested

Future work of the Council (contd)

- Work with other jurisdictions to assist in consideration of the Uniform Law framework
- Continue various stakeholder engagement and other consultation activities
- Continuing research, policy and other work to support the Council and future sub-committees

Future work of the Council (contd)

- Contribute to Law Council of Australia review of the ASCRs in 2016
- Other projects/topics referred to the Council or to the Commissioner
- Information Sheets and communications activities, including continuing maintenance of our web site

Visit: www.legalservicescouncil.org.au for:

- **INFORMATION SHEETS** – for legal practitioners, law practices and consumers
- **COSTS DISCLOSURE FORM** – a template for the costs disclosure form will make disclosure for lower priced matters **simple and convenient**
- **LSC NEWS** – check for regular updates about our monitoring and policy work within the Framework.

Thank you

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COUNCIL