



# INSTITUTE OF LEGAL EXECUTIVES®

## The Institute of Legal Executives (Victoria)

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~ Incorporated in 1966 ~

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16 January 2015

The Hon. Michael Black AC QC  
Chair, Legal Services Council  
By email: [submissions@legalservicescouncil.org.au](mailto:submissions@legalservicescouncil.org.au)

Dear The Hon. M. Black,

### **Re: Proposed *Legal Profession Uniform Rules***

We refer to your letter dated 3 December 2014. The Institute is grateful for this opportunity to make a submission concerning the above.

We have not addressed all matters in the proposed Rules, but only those where we feel able to contribute.

### Proposed Legal Profession Uniform General Rules 2014

*Exceptions to the prohibition on unqualified legal practice and the definition of 'qualified entity' (Rule 11)*

- We query if a provision similar to section 2.2.2(2)(f)<sup>1</sup> *Legal Profession Act 2004* (Vic.), providing for appearances by non-legal practitioners if authorised by law or with the leave of the Court, should be included. This is suggested to avoid doubt where, for example, a non-legal practitioner has been instructed by his/her Principal to appear, states his/her qualifications to the Court, and successfully seeks leave.
- The Legal Services Council may also wish to consider non-lawyer cost consultants directly engaged by Australian legal practitioners for file costing purposes - Mr. Michael McGarvie, Legal Services Commissioner, may have made comment on this issue. In this regard we also bring to your attention *Defteros v Scott [2014] VSCA 154* – we suggest that this issue does need to be resolved, albeit that from the Institute's point of view we only have two known members engaged in this type of work.

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<sup>1</sup> and 2.2.2(3)

- We query if Rule 11(1)(b) should be extended to cover the current exemption in section 53A *Estate Agents Act 1980* (Vic.).

*Consideration of application for grant or renewal of Australian practising certificate and statutory condition to engage in supervised legal practice (Rules 14 and 15)*

- We bring to your attention an issue in relation to the above.

There are some Australian legal practitioners<sup>2</sup> who did not complete supervised legal practice prior to admission, being exempted, for example, through the operation of Rule 18 of the *Council of Legal Education Rules* (Vic.) in force at the time.

There appears to be doubt that section 12(1) of Schedule 4 (Transitional) completely covers/overrides the provisions of section 49 Schedule 1 (Statutory requirement for supervised legal practice prior to issue (renewal) of full practising certificate, with a specific exemption for barristers in subsection (3) but not for others). Rather than relying only upon sections 49(4) and (5), we feel this situation should also be addressed in the Rules by providing a specific exemption from the supervised legal practice requirement where the applicant for renewal previously held a full practising certificate<sup>3</sup>.

*Journal transfers (Rule 45)*

- We query if Rule 45(1)(c) should read ‘*if applicable*, the transfer is authorised in writing by an external intervener *appointed* for the law practice; and’.

*Costs Disclosure Form(s) (Rule 68)*

- We include the following suggestions on the basis that the purpose of the Form(s) is to provide the client with a ‘snapshot’ of legal costs and related disbursements/charges, but is not for the purpose of excluding the provision of further information where the law practice feels this is necessary in the interests of the particular client and good practice.
- We feel that the use of the words ‘Below is an estimate of the other *costs* that I will bill you for’ appearing immediately before the words ‘Other *disbursements*’ might be confusing, and perhaps another descriptor could be used, such as ‘charges’.
- Comment: There appears to be an inconsistency with section 6 *Legal Profession Uniform Law*. The Form(s) includes an estimate for ‘total legal costs’ *not* including GST or other disbursements; however, section 6 provides:

“*legal costs* means—

- (a) amounts that a person has been or may be charged by, or is or may become liable to pay to, a law practice for the provision of legal services; or
- (b) without limitation, amounts that a person has been or may be charged, or is or become liable to pay, as a third party payer ... including disbursements but not including interest;”

- We suggest that reference to interest<sup>4</sup> be included.

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<sup>2</sup> such as the writer

<sup>3</sup> and there is no other reason for supervised practice, such as disciplinary proceedings

<sup>4</sup> Rule 70

- Whilst it might be expected that practitioners who regularly practise in certain matters where precise legal fees cannot be estimated at the outset<sup>5</sup> will have well developed disclosure documents, within the Form(s) we suggest there should be an option to provide a *range* of legal costs for the benefit of clients and practitioners in other types of ‘typical’ matters where it will not be possible to give a precise estimate at the outset but where it is anticipated legal fees will fall below \$3,000.00<sup>6</sup>.
- Additionally, for guidance, in the panel to the right ‘How I calculate this estimate’ (or in an explanatory note) could be examples of the basis on which legal fees are estimated such as a Practitioner Remuneration Order, Court Scale, hourly rate etc.
- Could this Form(s), for the purpose of providing a ‘snapshot’ also be used for matters where legal fees are anticipated to exceed \$3,000.00, with an option ‘attached is a Disclosure Statement providing further details’?
- #Also, for the benefit of practitioner and client alike, there could be an optional panel (with a note to delete if inapplicable) to the effect that ‘We are obliged to give you certain information about your rights, and provide this Disclosure Form to you for that purpose, and also for the purpose of providing you with an estimate of our legal costs for ..... (initial consultation) ....., GST and out-of-pocket disbursements for ..... (initial searches) ..... We are unable to provide you with a more complete estimate of our legal costs until ..... (you provide us with certain information/we carry out searches etc.) .....’.
- Comment: Whilst this Form(s) will be of great assistance to practitioners and clients alike, we are concerned that there could be a consequential failure by some practitioners to provide additional relevant information without a ‘prompt’ in the Form(s) or accompanying general information sheet.

We expect that many law practices may only use this Form for the purposes of ensuring that basic required information is disclosed (vis-à-vis the current Form B3), and that they will rely upon more detailed forms to provide further information, such as the Disclosure Statements and Cost Agreements currently made available to member practitioners by the Law Institute of Victoria. However, we are concerned that some law practices might see this single form as a complete alternate, and fail to include further relevant information such as ‘Should additional work be required outside the usual work entailed in a ..... Conveyancing ..... matter then we may charge you additional legal fees based on the Practitioner Remuneration Order, a copy of which will be forwarded to you on request.’<sup>7</sup>

- Comment: It can often be a perception of the client that his/her matter is a ‘simple’ one, not requiring particular skills, and therefore legal fees should be minimal. Conveyancing is a prime example where it is often only the skill and broad knowledge of the practitioner which achieves a satisfactory result for the client.

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<sup>5</sup> e.g. Litigation matters

<sup>6</sup> such as in small Estates where there is a Scale in respect to obtaining a Grant but the work involved could also include seeking to admit a copy Will to Probate where it is discovered that the original has been inadvertently lost or destroyed, or addressing discrepancies in the execution of the Will, or the appointment of substitute Executors or Administrators, and where timely administration might be hampered by uncooperative asset holders; or in a Conveyancing matter which involves an unregistered Plan of Subdivision and a lengthy settlement period

<sup>7</sup> to cover situations where costs may increase by a moderate amount, for example, where the client does not respond to information requests or requires additional work concerning, but not directly relevant to, the matter in hand, or where minor disputes arise between parties to the matter (not in respect to situations where a further formal disclosure would be required or prudent)

However, clients often view conveyancing as ‘filling in forms’, and are very unhappy when additional legal fees are charged due to complex issues.

We feel that some information to this effect could be included in the general information sheet to accompany the Costs Disclosure Form.

- Comment: It may be simpler to have client rights on a separate page.
- #Query: Is it proposed that the law practice cannot carry out any work whatsoever until the Form(s) is signed and returned by the client? This could create a situation where a client needs urgent advice, or where the law practice needs to undertake some work initially in order to ascertain what fees and charges might properly apply, but work cannot proceed.

A separate Client Rights Form would allow a law practice to provide the client with this Form together with information as to what preliminary work needs to be carried out before an estimate of legal fees and other charges can be given.<sup>8</sup>

#### *Costs assessment participation (Rule 71)*

- Yes, we agree, the costs assessor should be able to proceed with assessment where, after being provided with the opportunity to do so, a party does not participate.

#### *Minimum standards for professional indemnity insurance (Rule 73)*

- We suggest that professional indemnity insurance providers in the relevant jurisdictions be consulted to ensure that, given emerging new areas of legal services such as electronic conveyancing, a policy taken out by an Australian legal practitioner in good faith does in fact cover ‘usual and ordinary’ facets of legal practice.

#### *Notice to be given where certain legal services not covered by insurance (Rule 74)*

- The intent of this Rule was not clearly apparent to the writer on first reading, and clarification was sought from LPLC.

Possibly an explanatory note might be inserted in relation to an Australian legal practitioner whose place of practice remains the relevant Australian jurisdiction but who is temporarily overseas and communicating with his/her client(s) in the ordinary course of practise.

#### *Professional indemnity insurance exemptions (Rule 76, and vis-à-vis section 215)*

- We feel that law practices with offices in two jurisdictions should be granted an automatic exemption in the same way as practices with offices in three or more jurisdictions, as we see no reason why a differentiation should be made between ‘two’ or ‘three’ jurisdictions.

We are also in the process of making a submission to the Law Council of Australia in respect to the Proposed Rules for Solicitors (Legal practice, legal profession conduct and continuing professional development rules).

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<sup>8</sup> We suggest it is currently the practice of some law practices to provide Form B3, together with a preliminary ‘rough’ estimate, in such situations before proceeding to formal costs disclosure.

Yours sincerely,



(Miss) Roz Curnow

Chief Executive Officer

On behalf of the Council of the Institute

and on behalf of the Council of the Institute of Legal Executives (Australia) Limited

[www.legalexecutives.asn.au](http://www.legalexecutives.asn.au)

Our Philosophy:

*Everyone* employed in the legal profession is *important*;  
every task done well, whether it be mundane or carried out at a high level of responsibility,  
contributes to a better profession.

*Experientia Docet Sapientiam: Experience Teaches Wisdom.*