

Your reference:

Our reference: NA BW:JL



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19 January 2015

Mr Dale Boucher  
Chief Executive Officer and Commissioner for Uniform Legal Services  
Regulation  
Legal Services Council  
Public Submissions - Uniform General Rules  
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Dear Mr Boucher,

**Proposed Uniform General Rules**

Victoria Legal Aid (VLA) welcomes the opportunity to make submissions and comment on the proposed Uniform General Rules.

VLA is an independent statutory body established under the *Legal Aid Act 1978* (Vic) with objectives that provision of legal aid and providing the community with improved access to justice and legal remedies.

Our response to the Legal Profession General Rules is confined to

- Part 1.2 , Rule 6 – Suitability matters (comment only)
- Part 4.2, Division 2 – Trust money and Trust Accounts
- Chapter 4, Part 4.5 – Fidelity cover

Please contact Jenny Lawton, Managing Lawyer Practice Standards if you require further information as part of your consultation. Jenny may be contacted on 03 9269 0155.

Yours faithfully



**BEVAN WARNER**  
Managing Director



## Submission Division 2 – Trust money and Trust Accounts

### Background

Victoria Legal Aid (VLA) provides grants of legal assistance to people who are eligible for them pursuant to our statutory guidelines. Legal services provided pursuant to that grant of legal assistance are provided by both VLA in-house lawyers and the private profession. VLA pays private practitioners for the services they provide, according to established guidelines.

Some assisted persons are assessed as being required to pay a contribution towards the cost to VLA of providing this legal assistance. The amount of the contribution (if any) is determined in accordance with the *Legal Aid Act* and relevant guidelines.

Contributions of this kind are made under the *Legal Aid Act* and not pursuant to a costs agreement or similar. They form part of the Legal Aid Fund, and where they are paid in advance of legal work being done, are not trust funds (s27(4) *Legal Aid Act*)).

### Issue

By virtue of s16(5) of the *Legal Aid Act 1978* (as amended by the Legal Profession Uniform (LPUL) Application Act), Part 4.2 of the LPUL will apply to VLA as if it were an incorporated legal practice.

Under s.138 of LPUL, VLA can only disburse trust funds in accordance with the direction of the person on whose behalf they are held. This provision is subject to the order of a court of competent jurisdiction, or as authorised by law. Rule 45 of the proposed rules authorises for funds held for a client on account of legal costs to be disbursed without a specific direction, if the law practice has sent a bill to the client, and the client either does not object, or objects but takes no further action.

In some limited circumstances, VLA holds trust funds as a result of the performance of its functions under the *Legal Aid Act*. Under current regulation, the disbursement of these funds is not required to be authorised by the client, is not the subject of a court order or otherwise specifically authorised by law. Under Regulation 3.3.34 of the *Legal Profession Regulations 2005*, VLA is able to disburse those funds by providing a notice to a person of our intention to transfer funds from trust to the Legal Aid Fund. This provision has not been repeated in the new Rules, and leaves a gap in VLA's ability to properly administer the Legal Aid Fund in accordance with the *Legal Aid Act*.

### Submission and recommendation

VLA recommends an additional Rule 35A be added, allowing VLA to disburse money from its trust account either:

1. by following the process outlined in Rule 35, if the funds in question are trust funds are held on behalf of a client for the payment of legal costs; or
2. otherwise by appropriate *notice* to the client of its intention to do so.

A notice rather than bill of costs is recommended to be retained for VLA services as funds held in trust are not in all circumstances 'legal costs' as per Part 4.3 of the LPUL. Given that the Legal Aid Fund pays for the vast majority of legal matters funded by VLA, it is not considered that all the provisions and consequences relating to costs agreements are relevant to VLA.



## **Submission – Chapter 4, Part 4.5 Fidelity cover**

### **Background - history of exemption**

Since 2001, persons holding a community legal centre (CLC) practising certificate have been exempt from the payment of contributions to the fidelity fund. Since 2003, this has been by way of their inclusion in a specific class of “Exempt Practitioners” included in the annual determination of contributions to the fidelity fund. Each annual determination since then has included “employees of a CLC” in the class of exempt practitioners and set a contribution rate of Nil.

As a result of this exemption, most VLA staff do not pay a fidelity fund contribution (as the majority hold CLC practising certificates). The exemption captures approximately 320 of our 349 practising certificate holders. The remaining staff – who do pay the contribution – are those who hold principal practising certificates with trust authorisation, and those who are registered as supervising solicitors at a community legal centre.

Section 225(4) of the LPUL effectively provides an exemption from the payment of fidelity fund fees (and by extension any levies) to barristers, corporate legal practitioners, and government legal practitioners. CLC employees (and by extension, VLA employees) are no longer exempt.

### **Submission and recommendation**

VLA seeks a new Rule 79A, to the effect that “Section 225 of the LPUL does not apply to officers and employees of VLA who are legal practitioners not authorised to receive trust funds”.

Please note that under the *Legal Aid Act*, VLA is able to “employ any officers and employees necessary for the purposes of this Act”. This is slightly different to the description of our legal practitioners in the exemption previously granted. We suggest the use of these words for the sake of consistency and the avoidance of doubt about which VLA staff are intended to be covered by the exemption.

### **Comment**

The abovementioned recommendation would serve to exempt only VLA lawyers. We note that further consultation with the community legal sector would be required to appropriately define the scope of the exemption.

## **Submission - Rule 6 – Suitability matters**

### **Comment**

The last suitability matter listed in Rule 6 is “whether the person is currently unable to carry out satisfactorily the inherent requirements of practice as an Australian legal practitioner”. This suitability matter is new and potentially covers a wide range of circumstances which were not within the current equivalent suitability matters list.

Practitioners will need further guidance about what Rule 6 means in practice, to be able to assess and certify whether they meet this requirement when applying for a practising certificate.