

Legal Services Council  
Level 11, 170 Phillips Street  
Sydney  
NSW 2000

6th January 2015

Dear Sirs,

**Re: Draft Uniform Legal Profession General Rules**

Dear Sirs

I make the following submissions in relation to the draft Legal Profession Uniform General Rules and the questions posed in the online questionnaire.

**Question 2 - Other Rules**

*Rule 6 - Suitability*

1. Add to Rule 6 the following:

- whether a person is, or has been, a legal practitioner director, or a principal, of an incorporated legal practice while the practice;
  - is or was an externally administered body corporate under the Corporations Act;
  - ASIC has ordered the winding up of the company under the Corporations Act;
  - is or was deregistered under the Corporations Act.

*Reason* - to protect consumers of legal services, the ATO, employees, and the legal profession as a whole, against Legal Practitioner Directors or Principals of ILPs (or lay directors) who are involved in the “phoenix-ing” of incorporated legal practices. At present there is potentially little or no sanction from a legal profession regulation perspective against directors who are involved in the “phoenix-ing” of ILPs.

Note, a similar type clause (but not inducing deregistration) to amend the Queensland Legal Profession Act, 2007 with regard to suitability is currently under consideration by the Queensland parliament.

2. Extend Sect 6 (l) to include (iii) managing a corporation.

*Reason* - There are good policy reasons to ensure that a person who has been disqualified from managing a corporation which is not an Incorporated Legal Practice has their suitability considered. Any disqualification from managing a corporation, ILP or other, is a serious matter and should be treated as such. It is inconsistent to only make disqualification from managing an ILP a suitability matter but not disqualification from managing a non ILP.

3. Rule 16 - Discretionary Conditions on Australian Practising Certificate

Rule 16(f) amend the rule to include the services of a “management expert / consultant”.

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*Reason* - the cause of a law practice's difficulties may be financial hence the need for an accountant or other financial specialist but they also may be related to more general management or governance reasons. Assisting a law practice with its general management is a skill for a management expert / consultant.

#### 4. Rule 28 - Notice of Cessation of Legal Practice

The notice should include the requirement for the principal(s) to advise the DLRA of the:

- the reason why the corporation is ceasing to be an ILP;
- the future status of the corporation - is to be wound up and / or deregistered etc.
- a declaration that all debts due and owing will be discharged by the ILP or the Principals.

*Reason* - To ensure that the DLRA has up to date information with regard to corporations that were ILPs and the principals / directors of those corporations. This rule will also alert the DLRA to potential phoenix-ing of ILPs by the use of similar named corporations.

#### 5. New Rule for Sect 256

Define "Class of Law Practices" for the purpose of Sect 256 (2) to include all law practices except those law practices which:

- Hold a current ISO 9000 or Law 9000 or an equivalent internationally recognised quality standard accreditation;
- Have a demonstrable internally generated and audited quality management system; or
- Have an annual turnover of \$5 million or more.

*Reason* - appropriate management systems (as defined in NSW and Victoria) are a good starting point for the successful operation and management of a law practice both from a legal services perspective and a business perspective. As it is in the interests of the legal profession, legal regulators, and consumers of legal services to have well run and managed law practices (notwithstanding their legal structure) all law practices, bar the exceptions, should have to implement and maintain appropriate management systems. The requirement to implement and maintain appropriate management systems only after an audit based upon certain defined criteria is reactive not proactive.

The class exceptions are based on the following reasoning:

- If a law practice has a current certification for ISO 9000 or Law 9000 or an an equivalent internationally recognised quality standard accreditation it will already meet all the requirements for appropriate management systems;
- If a law practice has developed its own internal quality management system (which may be based upon an international system) and that system is subject to independent audit then it is likely to meet all the requirements for appropriate management systems;
- If a law practice has a turn over of \$5 million or more it is likely to have a defined management structure with well developed internal processes and systems including the mechanisms for clients to complain directly to the firm.

#### **Question 4 - Costs Disclosure Forms**

The form reads as if it has been written by lawyers for lawyers. It should be reworded to make it more consumer friendly.

The use of the word “significant” in the context of changes to estimated costs is open to different interpretation by the lawyer and the client therefore leading to potential complaint by the client.

#### **Question 5 - Trust Money**

1. Rule 38 - Computerised Accounting Systems - printed or other copies of trust records

Amend all the subsections of Rule 38 to allow the law practice print trust records on demand, in other words not to impose an obligation to print and store trust records.

*Reason* - in the age of the paperless law practice imposing an obligation to print and store paper trust records is outdated. So long as the law practice has good IT systems and back up then this should be acceptable.

2. Rule 41 - Computerised Accounting Systems - back ups

Amend Rule 41(2)(a) to a daily or weekly back up obligation instead of a monthly requirement.

*Reason* - current practice in most law practices would be for a daily or weekly back-up. A month between back-ups is too long.

#### **Question 8 - Compliance Audits**

Undertaking an audit of a law practice under Sect 256(1) is a serious matter for the auditor, the law practice and the DLRA.

##### *Auditor Qualifications*

The auditor should have audit skills (both technical and interpersonal), knowledge of how lawyers in general work and how law practices in general operate from both a legal services perspective and business perspective, and knowledge of the Legal Profession Uniform Law, Rules, and professional obligations. If trust account auditing is to be included then the auditor will need a detailed knowledge of the trust accounts rules. As an audit will create stress in the principals, employees, and others in the law practice the auditor must have interpersonal and interview skills to seek and obtain information to allow the audit to be completed to a satisfactory standard.

##### *Authorised / Approved Auditor*

It may be useful to have an auditor panel made up of auditors authorised or approved by the LSC / DLRA. This would act as a quality control on the auditor candidates. An example is how AUSTRAC authorise / approve external auditors under the Anti-Money Laundering Act, 2006. LSC would have to draw up and publish guidelines for approval / authorisation. Alternatively, a multi user list could be drawn up from auditors who are willing to undertake the work.

### *Auditor Appointment*

If a list of authorised / approved auditors exists then the DLRA should be able to choose a suitable auditor from that list. If there is a multi user list then LSC / DLRA should approach one or more of those on that list to see if a suitable auditor is available and suitable. If there is no authorisation / approval list then LSC or DLRA should approach those

### *Audit Scope*

Sect 256 defines the audit scope as compliance of the law practice with the Uniform Law, the Uniform Rules, and other applicable professional obligations. That scope is very broad. It would be incumbent on LSC or DLRA to explicitly outline the full scope of the audit including listing in detail all the obligations against which the law practice is to be audited. To avoid any potential problems for the auditor the LSC or DLRA must also give guidance as to how the auditor should interpret certain sections or clauses of the act, rules or professional obligations. As an audit of a law practice's adherence to particular section of an act or rule is potentially a quasi-judicial determination the auditor should be given every assistance by the LSC or DLRA. Lawyers by their very nature will not take kindly to an auditor deciding that they or the law practice has not met an obligation.

The auditor should be given powers of inspection under the Act to inspect and collect evidence.

The LSC or DLRA should give realistic guidelines as to the timescale of the audit, the right to reply, and the re-audit.

### *Pricing of the Audit*

Who is to pay for the audit? On the assumption that it is the DLRA rather than the law practice, then the auditor and the DLRA will need to ensure that the price for the work is profitable for both taking into consideration the risk involved from the auditor's perspective.

### *Audit Report*

Will the LSC or DLRA design a pro forma type report or will it be left to the auditor?

## **Questions 9-11 Complaints Resolution Process**

All law practices should be required to have and implement an internal complaints resolution process. This process would be the option for a client complaint but with the client retaining the right to bring the complaint to the DLRA. An internal complaints procedure would ensure that the complaint is dealt with at source.

Having an internal complaints management system is currently a requirement for "appropriate management systems". In the financial services sector it is a requirement for an Australian Financial Services Licence. To draw on another jurisdiction, in England and Wales the Solicitors Regulation Authority Handbook in Chapter 1 "Client Care states "if clients are not happy with the service they have received they know how to make a complaint and that all complaints are dealt with promptly and fairly. The Handbook outlines the following regulatory Outcomes:

- O1.9 clients are informed in writing at the outset of their matter of their right to complain and how complaints can be made;

- O1.10 clients are informed in writing, both at the time of engagement and at the conclusion of your complaints procedure, of their right to complain to the Legal Ombudsman, the time frame for doing so and full details of how to contact the Legal Ombudsman;
- O1.11 clients' complaints are dealt with promptly, fairly, openly and effectively.

Yours sincerely,



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Managing Director

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