

Your Ref:

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10 August 2010

National Legal Profession Taskforce  
c/o Assistant Secretary  
National Legal Profession Branch  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

By email to [legalprofession@ag.gov.au](mailto:legalprofession@ag.gov.au)

Dear Mr Wilkins

Re National Legal Profession Reform Draft Bill and Rules – Submission by the Queensland Law Society Inc

Queensland Law Society (QLS) has serious concerns about the draft NLPR Bill and Rules. We highlight some of those concerns in this covering letter, and detail our proposals for amendments to the draft documents in our attached detailed submission. This letter and the attached detailed submission form the QLS submission to the Task Force.

QLS agrees with the content of the Law Council of Australia submission to the Task Force. The matters raised in this submission go to some more practical application matters, of which we have knowledge because of our current regulatory responsibilities. They also address some drafting errors and inconsistencies which will make implementation difficult.

QLS has some additional concerns relating specifically to the potential increase in regulatory and compliance costs, and details those as a particular concern in a State in which the profession is geographically very wide-spread to meet the population and business demands of the Queensland economy.

QLS has seen and supports:

- the comments of the Trust Account Investigators in relation to Trust matters.
- the content of the submission from Lexon Pte Ltd in relation to Profession Indemnity Insurance sections.
- the submission which we understand is being made in relation to the retention of a Practice Management Course as a consumer protection process as well as a compulsory profession development requirement prior to gaining a principal's practicing certificate

We have not included those matters in our submission in any detail, as we consider that the comments of those working in the particular specialist areas have sufficient value without repetition.

QLS concerns

*Costing of the proposed scheme*

1. The overall costing of the proposed scheme continues to be of deep concern, because there:
  - has been no adequate costing for the proposed new bodies.
  - is no plan for the new National bodies to reduce the oft quoted, but never evidenced "55" current regulatory bodies, and presumably thereby save costs.
2. Despite statements made by the Task Force about undertaking further detailed costing work, no results of that work have been released. We understand that the work is focusing on the funding of the new bodies,

specifically through the mechanisms of Practising Certificate fees, Admission fees and the process by which interest on any national trust accounts would be “repatriated” to the appropriate jurisdictional fund.

3. This lack of financial information about the proposals does not answer the requests made of the Task Force by the LCA and the NLPR Consultative Group since the inception of the project – that the current costs be properly disclosed, and there be a planned progress towards reducing regulatory costs over time. This is to meet one of the core stated outcomes sought in the reform process, that is, that national consistency should reduce overall costs of regulation.

#### *Assumptions about funding the proposed scheme*

1. The current approach of the Task Force appears to evidence an implicit assumption that the profession will pay for the new scheme – including any new costs and bodies over which the profession can exercise little, if any, control. This is contradictory to the stated objectives of the Task Force to ensure that the national scheme would operate within the existing funding envelope. Without any evidence of proposed costs, assumptions remain unstated, and do little to support confidence in the profession in Queensland that it will be managed within the current envelope.
2. In Queensland in particular, this has the potential to increase costs to practice in the following ways:
  - Increased compliance costs – arising from the unwarranted extension of the Ombudsman powers – for example to require compliance reviews to be undertaken by all practices, not, as currently, only by ILPs. In Queensland, this is an increase from overseeing 251 ILPS to overseeing over 1400 practices. We cannot see how this “simple” extension of power could be undertaken sensibly by the LSC without significant additional resources.
  - The potential for increased Practising Certificate fees to be applied to pay for the new national bodies. In Queensland, the PC fees are currently set at a reasonable level and the revenue used to pay for regulatory activities through JAG.
  - Queensland admission fees currently self-fund the Legal Practitioners Admission Board operations. It is entirely unclear how this financial system would operate under the proposed centralisation of admission processes.

#### **Queensland profession as business operations**

1. There has been scant attention paid by the Task Force to the types of businesses which are being regulated by the NLPR.
  - In Queensland, 64% of all law practices are sole practitioners.
  - When combined with those ILP’s operating with a sole Legal Practitioner Director, that figure rises to 76.7%.
2. What this means in practice is that the proposed regulation is for predominantly very small business. Compliance costs must be considered in that context, as must any additional costs to doing business (eg through increased Practising Certificate fees). There are limited opportunities in small business to carry increased business costs without considering raising the required revenue – in this case, business revenue is fees paid by clients.
3. The business and economic geography of Queensland is unique in that there are a many large regional and rural centres which operate to support a widespread population. Numbers of solicitors operate in most of these centres. Our data reveals the distribution of solicitors employed in firms in Queensland to service these major centres, beyond the Brisbane and suburban area. An indication of the numbers of practitioners are:
  - Gold Coast and hinterland - more than 690
  - Caboolture District - more than 45
  - Redcliffe and Pine Rivers district - more than 50
  - Ipswich and district - more than 85
  - Logan City and Beenleigh - more than 95
  - Downs and South West - more than 170
  - Sunshine Coast - more than 50

- Gympie and South Burnett districts - more than 50
  - Fraser Coast - more than 50
  - Bundaberg - more than 40
  - Gladstone district – more than 20
  - Mackay - more than 120
  - Townsville district - more than 180
  - North Queensland – more than 40
  - Far North Queensland – more than 270
  - Central Queensland – more than 90
  - North West Queensland – more than 15
4. There is little evidence that the Task Force understands the type of business that it seeks to regulate (very small business in the main), or understands that these firms do not earn millions of dollars. The information that we gather indicates in broad terms that:
- about 57% of Queensland *firms* (not individual solicitors) earn under \$500,000 gross per annum, and
  - 77% of *firms* earn under \$1million gross per annum.
5. From these earnings, practitioners and firms employ solicitors, support staff, rent property, pay for utilities and insurances, invest in appropriate IT and other business support. On these facts, clearly any additional compliance costs will be a financial burden, which at the lower end of income may result in a decision to discontinue operations. This is a matter of grave concern to QLS and to its members.

#### Increased regulatory powers

1. There is no evidence produced by the Task Force to support the considerable extension of regulatory powers in the regulatory arm (Ombudsman). Indeed, the QLS is of the view that the evidence in the LSC Annual Reports indicates that over the past 5 years, complaints about lawyers in Queensland have reduced overall. We do not think this is entirely due to the regulatory regime of the LSC. We believe that the extensive work of both QLS and its PII provider, Lexon, in providing considerable practice management material, professional development, ethics and risk management training has contributed greatly to the awareness of practitioners of improving their management of clients and matters.
2. We believe that there are worthy objectives in national consistency which will benefit both firms which operate across borders, and practitioners who relocate. However, the profession is already highly regulated, and we do not believe there has been any demonstrated benefit either to clients (consumers) or to the profession in extending current regulatory oversight by the LSC or equivalent. Indeed, there is potential detriment to the service provided if regulatory costs increase without any perceived benefit, and make the profession an unattractive business prospect.

#### Consultation process and regulating the profession

QLS understands that there will not be further general consultation in response to the public consultation and submissions, but that there may be some targeted consultation on some areas of the package. We regard this as a poor position for either the Task Force or for COAG to maintain. We consider that any targeted consultation must relate to the full text of the draft Bill and Rules, as it is only when the whole package is considered that inconsistencies and impractical outcomes can be identified properly.

QLS states its serious concerns about the lack of any iterative consultation process in relation to the development of the current draft package and the submissions already made to the Task Force. We consider that the risk of a flawed legislative package simply for the purpose of meeting a COAG timeline, is too great to be supported. It is neither good policy or practice.

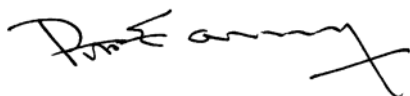
QLS is keen – as is the profession generally – to support many of the changes for national consistency. However, the new scheme must be practical, cost effective, and not simply be a regulatory impost on the majority of Australian lawyers who work in small practices.

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Regulating the profession is not comparative to regulating corporate utilities or banks. The profession largely works to serve individual clients at an individual and highly tailored level. It is not a packaged or similar service for all clients. Regulatory and compliance costs must be kept to a minimum both in the interests of clients and of those who run predominantly small businesses.

I attach our more detailed submission on the draft package.

Yours faithfully

A handwritten signature in black ink, appearing to read "Peter Eardley", with a stylized flourish at the end.

Peter Eardley  
President