Law Council
OF AUSTRALIA

Responses to questions on notice and other matters arising from hearings into Access to Justice Arrangements

Productivity Commission

2 July 2014

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Introduction

1. On 19 June 2014 the Law Council of Australia appeared at a public hearing for the Productivity Commission Inquiry into Access to Justice Arrangements. At the hearing, the Law Council agreed to respond to certain observations and questions on notice. The Law Council also takes this opportunity to provide further information and submissions in support of its previous testimony.

2. The following is an addendum to the Law Council's submission in response to the Productivity Commission's Draft Report on Access to Justice Arrangements (Draft Report) dated 5 June 2014 (June Submission), which was preceded by an earlier submission in response to the Commission's Issues Paper dated 13 November 2013 (November Submission) and a supplementary submission lodged on 13 May 2014 (May Submission).

Timeframes

3. The Law Council appreciates the Productivity Commission (the Commission)having taken the opportunity to express its unhappiness at the late receipt of the June Submission (the 123 page submission was filed with the Commission on 5 June 2014).

4. The Law Council regrets its submission was late but notes that it did as well as it could in response to a Draft Report comprising 875 pages issued by the Commission on 8 April 2014. However, the Law Council is grateful for the recognition by the Commission of the limits on the Law Council's resources for undertaking this work.

5. The Law Council is, as the Commission recognises, the only organisation that could realistically co-ordinate and present the views of the legal profession and to do so across the wide range of issues raised for discussion by the September 2013 Issues Paper. As the peak body representing the Australian legal profession on national and international issues the, Law Council has the ability to access, collate and distil the views of the law societies and bar associations around the nation.

6. In responding to the Inquiry into Access to Justice Arrangements, we have been greatly impressed by the thought and effort contributed by very many practitioners who, through their local representative bodies, have provided material to be considered by the Council in providing its response to the Inquiry. The thousands of hours of voluntary work put into presenting material for consideration by practitioners around the country is a testament to the importance with which the Inquiry is regarded by the Australian legal profession.

7. Three separate submissions made by the Law Council in response to this Inquiry to-date have run to over 300 pages and have addressed every one of the manifold issues raised in the Issues Paper. This has involved coordinating feedback from the Law Council's 17 constituent bodies, 5 specialist Sections and several Advisory Committees. On a time costed basis the total value of this contribution runs into hundreds of thousands of dollars.

8. The hundreds of hours spent by the members of the working group established to coordinate the response to this Inquiry, in considering the issues and the material received, is a further very substantial pro bono contribution in its own right. It is important also to record that a senior policy lawyer employed by the Council has been in effect engaged full time on this project for almost a year while the President and

Secretary-General have each committed very many hours to reviewing and settling drafts, and engaging in consultation. The Law Council receives no government funding to facilitate such a commitment to assisting the work of the Commission and the Law Council is grateful for the Commission's recognition of the strain that this has placed on the Council's resources.

9. The Law Council has made - and will continue to make - every effort to engage closely with the Commission and its dedicated staff to assist with this ongoing Inquiry.

Unmet legal need

10. The Productivity Commission requested the Law Council revisit the Commission's analysis of unmet legal need.

11. In the Draft Report, the Commission estimated it was likely that, "Based on the LAW Survey data, around 17 per cent of the population or just over a third of those with any legal problem experienced some form of unmet legal need that related to a dispute that they considered substantial." In its June Submission the Law Council said [at paragraph 42]: "Even if the Commission's approach is accepted, on its own estimates 23.6 percent of the population experienced unmet need (Figure 2.4, Draft Report page 102). Therefore, it is difficult to understand the basis for the Productivity Commission's finding that only 17.1 per cent of the population experienced unmet legal need."

12. It was explained by the Commission at the public hearing that its calculation was based on the fact that many of those problems were clustered, which indicated that a smaller proportion of the population actually experienced significant unmet legal need.

13. The Law Council acknowledges that the reference to 23.6 per cent in its June Submission was a misinterpretation of data with respect to the proportion of matters involving unmet need, as opposed to the proportion of the population who experience substantial unmet need, and is content to defer to the Productivity Commission's analysis and to correct the record. It is noted, however, and it appeared to be accepted by the Commission at the hearing on 19 June, that the level of unmet legal need is still unacceptably high, regardless of whether the precise figure is 17 per cent or higher.

14. The Law Council maintains its concern about the suggested prospective reduction in unmet legal need from 17 per cent to 5 per cent, simply through proliferation of ombudsmen services, and suggests this may require further analysis and substantiation.

Trust account regulation

15. The Law Council notes the suggestion by the Commission that there may be scope for relaxation of trust account regulation for certain types of matters.

16. The Law Council does not oppose the suggestion in principle and considers it could result in a modest reduction in costs. However, there are some matters that should be given due consideration.

    (a) Where solicitors hold or deal with client monies on trust, they are required to deposit that money into the law practice's trust account. It is unlawful for a practitioner to mix trust money with money held in the firm's other accounts.

(b) Solicitors take their fiduciary duties in relation to trust money very seriously, and are required to maintain detailed records of the use and expenditure of trust moneys. These trust account records must be made available to regulatory authorities for inspection.

(c) Strict regulation of trust accounting exists to protect consumers of legal services. There is a heavy onus on solicitors not to access money held on trust for any other purpose than in the terms set out in the client retainer.

(d) It would be inappropriate to relax rules around trust accounting if this has the potential to expose clients to an increased risk of malfeasance.

(e) The Law Council would also be cautious in recommending any change to the trust account regulations that reduced the money held in solicitor trust accounts, given the impact that could have on reducing the income that flowed to Public Purpose Funds. This issue is discussed further below.

Protection of trust income

17. As the Commission is aware, Public Purpose Funds in each jurisdiction receive income from interest on moneys held in solicitor trust accounts. Such funds are then generally directed toward a range of important programs, including regulatory activities and legal assistance sector funding.

18. Historically low interest rates over the last several years have diminished the funds paid into the PPF in a number of jurisdictions, to the extent that there is a real risk to the continuation of many programs and the provision of important services. For example, the reduction in amounts able to be allocated to support legal assistance sector funding has meant that there has been a significant overall reduction in funding for legal services for disadvantaged or low-income Australians.

19. The Law Council observes that there are also risks to PPFs arising from changing technology, such as e-conveyancing. The Law Council notes the possibility that under the forthcoming e-conveyancing regime, trust monies for property transfers could be deposited into a central account, rather than solicitor trust accounts, thereby potentially reducing the interest that could flow to PPFs.

20. As an overarching issue, the Law Council submits that the volatility of trust account income resulting from economic and market forces, creates considerable uncertainty for legal aid commissions and other programs which rely on variable contributions from year-to-year. This inhibits the capacity of those organisations and project managers to reliably plan or budget for the future.

21. The Law Council suggests that a mechanism should exist, perhaps under the National Partnership Agreement on Legal Assistance Services, which would provide for additional funding to 'top-up' PPFs in the event funds drop below a certain level and PPF income reaches unsustainable levels. The Law Council considers this is necessary to ensure the ongoing viability of those programs funded by the PPF.

22. Alternatively, the Commonwealth, States and Territories should identify an alternative, more reliable funding stream for PPFs. The Law Council would be happy to work constructively with other stakeholders toward such a solution.

Limited Licence Legal Technicians (LLLT)

23. The Commission has sought the Law Council's views about the LLLT scheme set to be established in the State of Washington, in the United States of America.

24. The Law Council understands that, in January 2013, the Washington Supreme Court adopted a rule permitting the licencing of non-lawyers with requisite training to provide services in certain areas of the law. The Court appointed a LLLT Board, comprised of both lawyers and non-lawyers, to further develop the initiative and regulate the conduct of licencees, including the development of regulations for professional conduct, exam procedures, continuing education requirements, and disciplinary procedures.

25. The Law Council understands that family law is the first area that has been identified by the LLLT Board for use of limited licences. It is expected that the first applications for licence examinations will be called for in March 2015.[1]

26. According to Washington's Supreme Court, the LLLT Rule will "authorize certain persons to render limited legal assistance or advice in approved practice areas of law." (Washington's Admission to Practice Rules, Rule 28). That is, after completing certain training requirements, LLLTs can be licenced to practise law to a very limited scope, in limited areas.

27. In announcing the new Rule permitted limited practice by non-lawyers, the Washington Supreme Court Chief Justice Masden stated:

> "This new rule serves as an important first step to assist the thousands of unrepresented individuals seeking to resolve important civil legal matters each day in our courts….With our civil legal aid system overtaxed and underfunded, this is one strategy the Court believes can help assist those who find themselves in court, yet are unable to afford an attorney."[2]

28. Ostensibly therefore, the justifications for introducing the LLLT scheme in Washington State are broadly similar to the arguments proffered for introduction of limited licences in Australia. A study carried out by the Washington State Supreme Court in 2001, similar to the LAW Survey in Australia, found four-fifths of the legal problems of the poor remain unresolved and 85 per cent of legal problems experienced by the poor are handled without legal assistance.[3] The Study found that: "Low-income people who get legal assistance experience better outcomes and have greater respect for the justice system . . . ." but, by contrast, "[a]mong those who seek but do not get an attorney's help, only 21 percent feel positively toward the justice system."[4]

29. In announcing the new scheme, the State Supreme Court noted that:

> "…there are people who need only limited levels of assistance that can be provided by non-lawyers trained and overseen within the framework of the

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[1] See http://www.wsba.org/Licensing-and-Lawyer-Conduct/Limited-Licenses/Legal-Technicians
[2] See http://www.courts.wa.gov/newsinfo/?fa=newsinfo.pressdetail&newsid=2136
[3] Brooks Holland, 2013, *The Washington State Limited License Legal Technician Practice Rule: A National First in Access to Justice*, Mississippi Law Journal, Vol 82, p.80-82.
[4] Ibid, p.82.

regulatory system developed by the Practice of Law Board. This assistance should be reliable and affordable. Our system of justice requires it."[5]

30. The Law Council notes that the introduction of the Rule was controversial and faced opposition from some members of the Supreme Court Bench. Justice Owens dissented against the Order, on the basis that the obligation for supporting this new profession of 'legal technicians' was likely to fall on the Washington State Bar Association and Her Honour did not regard the Rule as restricting unqualified practise to the area of family law, or advancing access to justice.[6]

31. It is noted that it will be permissible for LLLTs to provide the following services:

(a) Obtain relevant facts, and explain the relevancy of such information to the client;

(b) Inform the client of applicable procedures, including deadlines, documents which must be filed, and the anticipated course of the legal proceeding;

(c) Inform the client of applicable procedures for proper service of process and filing of legal documents;

(d) Provide the client with self-help materials prepared by a Washington lawyer or approved by the Board, which contain information about relevant legal requirements, case law basis for the client's claim, and venue and jurisdiction requirements;

(e) Review documents or exhibits that the client has received from the opposing side, and explain them to the client;

(f) Select and complete certain forms that have been approved by the State of Washington, either through a governmental agency or by the Administrative Office of the Courts or the content of which is specified by statute; federal forms; forms prepared by a Washington lawyer; or forms approved by the Board; and advise the client of the significance of the selected forms to the client's case;

(g) Perform legal research and draft legal letters and documents beyond what is permitted in the previous paragraph, if the work is reviewed and approved by a Washington lawyer;

(h) Advise a client as to other documents that may be relevant to the client's case (such as exhibits, witness declarations, or party declarations), and explain how such additional documents or pleadings may affect the client's case;

(i) Assist the client in obtaining necessary documents, such as birth, death, or marriage certificates.[7]

32. LLLTs will be expressly prohibited from:

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[5] Supreme Court of Washington, Order no. 25700-a-1005. See http://www.wsba.org/~/media/Files/Legal%20Community/Committees_Boards_Panels/LLLT%20Board/Legal%20Technician%20Rule.ashx

[6] Ibid.

[7] See http://ulvlegalstudies.wordpress.com/2013/07/18/the-next-big-thing-limited-license-legal-technician/

(a) making any statement that he or she can or will obtain special favours from or has special influence with any court or governmental agency;

(b) retaining any fees or costs for services not performed;

(c) refusing to return documents supplied by, prepared by, or paid for by the client, upon the request of the client.

(d) claiming to be a lawyer or anything other than an LLLT.

(e) representing a client in court proceedings, formal administrative adjudicative proceedings, or other formal dispute resolution process, unless permitted Washington law.

(f) negotiating the client's legal rights or responsibilities, or communicating with another person the client's position or conveying to the client the position of another party, unless permitted by Washington law.

(g) providing services to a client in connection with a legal matter in another state, unless permitted by the laws of that state to perform such services for the client;

(h) representing or otherwise providing legal or law related services to a client, except as permitted by law.

(i) otherwise violate the Limited License Legal Technicians' Rules of Professional Conduct.[8]

33. Given the program has not yet commenced, it is difficult to rationally assess. As noted by the Law Council in its June Submission, it remains to be seen whether application of the same standards of regulation and probity to non-lawyers offering legal services will significantly reduce costs.

34. However, to the extent that the LLLT scheme contemplates unsupervised practice by non-lawyers, albeit limited to certain areas of law and types of services, the Law Council reiterates its remarks in the June Submission. The Law Council considers that anyone who purports to practise law, even on a limited basis, should be subject to the same regulatory, training, probity and insurance requirements and standards as licenced lawyers.

35. The Law Council suggests that the Productivity Commission recommend the LLLT scheme in Washington be assessed after it has been operating for a reasonable period, to allow a consideration of whether the scheme has led to any reduction in standards of consumer protection or levels of client satisfaction; and whether it has improved access to justice in that jurisdiction.

New York pre-admission pro bono scheme

36. The Law Council notes with great interest the New York State pre-admission pro bono scheme, established by Chief Judge Lippman.[9]

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[8] Ibid.
[9] http://www.nycourts.gov/ip/nya2j/pdfs/NYA2J_2012report.pdf

37. The Scheme, which is set to commence in 2015, will operate alongside the New York State Access to Justice Program, which aims to assist unrepresented litigants navigate their way through court processes. As noted by the director of that program, Justice Fisher:

> "In his latest in a series of extraordinary measures in the fight to address unmet civil legal services needs, our Chief Judge Jonathan Lippman has made New York the first state to require prospective lawyers to perform at least 50-hours of pro bono service before being licensed to practice law. The NYS Courts Access to Justice Program has long held the conviction that nurturing a lasting commitment to public service in law students and new lawyers is an important step toward alleviating unmet legal needs. Through the Law Student and Law Graduate Initiative and the Bridge the Gap Training Initiative, the NYS Courts Access to Justice Program places great emphasis on recruiting, training and supervising law students and law graduates. It is expected that the new 50-hour pro bono service requirement will significantly bolster these endeavors. It is hoped that our work, together with the efforts of The Task Force to Expand Access to Civil Legal Services in New York, Chief Judge Lippman's initiative to engage retired attorneys in the Attorney Emeritus Program, and his initiative to fund legal service providers through the judiciary budget, will provide much needed resources to meet the ever-growing demand."[10]

38. In his 2012 Law Day speech, Chief Judge Lippman stated:

> "So today, on Law Day, 2012, we turn over a new page in the bar admission process in New York -- by requiring each and every applicant for admission to contribute 50 hours of participation in law-related and uncompensated pro bono service before they can practice in New York State.
>
> "With this step, as it should be, New York will become the first state in the nation to require pro bono service for admission to the bar. What better way to send the strongest message to those about to enter our profession -- assisting in meeting the urgent need for legal services is a necessary and essential qualification to becoming a lawyer. With this new initiative, New York will lead the way in stating loudly and clearly that service to others is an indispensable part of our legal training and that before you can call yourself a lawyer in New York, you must demonstrate in a very tangible way your commitment to the ideals of our great profession."[11]

39. Chief Judge Lippman noted that, with about 10,000 people passing New York State's bar exam annually, the 50-hour requirement could produce 500,000 yearly hours of pro bono service. With an estimated 12,000 law graduates emerging from Australian universities each year, a similar scheme could theoretically result in 600,000 additional pro bono hours contributed by unqualified law graduates annually (though it should be noted that a substantial proportion of graduates never seek admission to practice).

40. The Law Council notes the Lippman scheme has not received unqualified support. For example:

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[10] Ibid, page iii.

[11] See http://www.nycourts.gov/whatsnew/Transcript-of-LawDay-Speech-May1-2012.pdf

(a) There is a sensible debate about whether mandating pro bono service sends the wrong message, given pro bono should ultimately be a voluntary activity.[12]

(b) Those required to do service would have little practice experience and may be struggling with financial burdens and possible job insecurity.[13]

41. These arguments have been countered by noting that students are unlikely to complete the pro bono quota in a single block, but over a period of time as they complete their practical legal training and supplement the skills they are already acquiring in the process

42. It is further noted that a significant sticking point for the scheme as it prepares to roll out in New York State in 2015, centres around the definition of 'pro bono', which can create conflicts for universities and other entities which have adopted a different definition. However, the Law Council does not consider this to be an insurmountable concern.

43. The Law Council suggests the New York State scheme warrants further investigation by the Productivity Commission. Given the large number of graduates from Australian law schools seeking work experience and an opportunity to contribute to the community or an introduction to legal practice, the Law Council believes such a scheme is worthy of consideration in Australia.

Costs

44. During the Law Council's evidence before the public hearing on 19 June, the Productivity Commission referred to the comments by the Supreme Court of Victoria Funds in Court (FIC), that the Court routinely reduces bills submitted for assessment by 22-25 per cent. The question raised was whether this rate of reduction indicates a systemic problem and suggests widespread overcharging generally in litigious matters.

45. Based on anecdotal evidence, the Law Council submits that such a conclusion would be unsafe and is not consistent with the experience of its members, or members of its constituent bodies, in relation to the taxation of litigation bills.

46. In addition, there are a number of unique features affecting FIC matters. The Law Council notes that the submission of FIC to the Inquiry dated 3 May 2014 refers to concern arising from bills of costs involving a conditional fee agreement and an 'uplift fee', a significant proportion of which are rejected on technical grounds. The Law Council agrees this is an issue for concern and is investigating the matter further.

47. As a general observation, the Law Council notes that FIC reviews a very small proportion of total bills issued to clients. For example, FIC advises that in May 2014 it received 11 new applications and settled 15 bills of costs.

48. Following consultations with practitioners who regularly apply to FIC to have costs assessed, the Law Council understands that it is not unusual for the Court to reduce costs by an average of 10 per cent. However, it is suggested that referral to averages

[12] ABA Standing Committee on Pro Bono and Public Service, New York's 50-hour Preadmission Pro Bono Rule: Weighing the Potential Pros and Cons, October 2013. See http://www.americanbar.org/content/dam/aba/administrative/probono_public_service/ls_pb_preadmission_pro_bono_requirement_white_paper.authcheckdam.pdf

[13] Ibid, quoting Professor Ben Trachtenberg at the University of Missouri School of Law.

or specific cases may distort the perception of how this actually occurs, as explained further below.

49. The Law Council is advised as follows:

    (a) In many instances a conditional fee agreement is voidable because of non-compliance with the *Legal Profession Act 2004* (Vic).

    (b) Reasons for the non-compliance vary greatly and can be quite technical. For example, there may be a plaintiff who initially did have capacity to conduct his or her affairs but who with the passage of time became incapable and required a litigation guardian. In those circumstances the Court takes the view that because the litigation guardian did not sign a conditional fee agreement at the commencement of the proceedings, the conditional costs agreement entered into by the plaintiff when he or she initially had capacity is deemed invalid, given the subsequent incapacity.

    (c) In those circumstances, the charging of fees in accordance with the conditional fee agreement up to the appointment of the litigation guardian is disallowed and fees are assessed in accordance with scale only. If the litigation guardian enters into a conditional fee agreement, the Court, if the agreement is compliant, will allow for the charging of fees in accordance with the conditional fee agreement but may substantially reduce the quantum of the uplift having regard to the stage of the proceedings involving the appointment of the guardian. Thus there are situations which can lead to the reduction in the fees claimed by practitioners, which cannot be characterised as overcharging, but which are dependent on the specific circumstances relevant to the proceedings and the discretionary approach adopted by the Court.

    (d) If, for example, a matter involved a conditional fee agreement which was noncompliant, the default position for costing is the relevant applicable scale.

    (e) When the Court is providing statistics on the quantum of reductions, it is important to remember that firms would generally adopt the approach that any defects in the agreement are clearly stated in the costs application and acknowledged. In those circumstances the costs are calculated in accordance with the relevant scale only. The firm generally does not contest the quantum in the Costs Court and endeavours usually to reach a negotiated outcome.

    (f) Further, in the majority of instances, the statistics will reveal that the 25 per cent uplift was presumably disallowed. The uplift fee is not a legal cost as such, but is a funding fee. Thus, if the 25 per cent uplift is disallowed, it will significantly impact upon the statistics generally and the amount agreed by the Court.

    (g) A practitioner may prepare an application based upon an expectation that the conditional fee agreement is compliant and the uplift fee claimable. The application for solicitor-client costs may not be excessive given the basis of charge. However, if the costs agreement is held inoperative and the uplift is disallowed then there is unfortunately a perception that the practitioner is overcharging.

    (h) In addition, the Court invariably raises the issue of proportionality. Thus if a plaintiff recovers $150,000 only, the quantum of costs, (even if in accordance with a valid conditional fee agreement and moderated by the practitioner to

reflect the quantum of the settlement) can still be significantly reduced having regard to the concept of proportionality.

50. The Law Council submits that it would be quite unsafe to assume that legal practitioners are generally 'over-charging' clients. As stated in FIC's submission, many decisions by FIC rejected specific elements on technical grounds, or due to deficiencies in the costs agreement.

51. A very specific kind of case with a very specific kind of interest cannot provide a proper basis for views about any broader range of matters. The Law Council is happy to assist further in pursuing and investigating this issue if that would be helpful – although a proper analysis will take some time if it is to be undertaken in an orderly, reliable and robust way.

Online costs information

52. The Commission has asked the Law Council to further consider its proposal to provide indicative information for consumers online, to assist them to understand the likely extent of costs in matters in which costs can be reasonably predicted at the outset of proceedings.

53. The Law Council reiterates its suggestion that a more useful resource for consumers of legal services would be to provide an online list of questions, which those seeking to engage a lawyer could ask, to gain a better understanding of the way in which costs are likely to (or may possibly) accrue over the course of contemplated proceedings.

54. The Law Council suggests there may be benefit in publishing information about costs in a limited number of straight-forward matters. This would, however, need to be heavily qualified to avoid misleading consumers about the real potential for greater costs to accrue that were not anticipated at the commencement of the proceedings.

Requirements for admission of foreign lawyers

55. The Productivity Commission has referred to evidence presented by a lawyer trained and admitted in the United Kingdom about apparently inappropriate training requirements imposed on foreign lawyers seeking admission in an Australian jurisdiction. The Commission has queried whether such requirements are necessary, or prohibitive of access to justice by way of limiting access to legal practice in Australia by foreign lawyers.

56. It is noted that foreign legal practitioners regularly seek admission in Australia and are subject to the admission requirements for foreign lawyers in the State or Territory in which they apply.

57. Australian lawyers are subject to similar conditions when applying to practise in foreign jurisdictions.

58. In relation to the specific example raised by the Commission, while a foreign practitioner may wish to practise law in Australia in a specific discipline, such as criminal law or corporate law,, a certain level of knowledge of other areas of law is required which might be incidental to the intended area of practice, about which the practitioner may have little or no knowledge. A further concern is that, once admitted,

there is typically nothing to prevent a foreign trained practitioner accepting work in an area in which he or she might have no background or knowledge.

59. That said, the Law Council is very supportive of reducing barriers to legal practise in Australia by foreign lawyers, consistent with its extensive and successful endeavours directed towards opening up foreign markets for Australian law practices and legal practitioners. In this regard, the Law Council would support a degree of relaxation of training requirements for foreign lawyers – subject of course to ensuring that consumer protection standards are not unreasonably compromised as a result.

Lay representation on regulatory bodies

60. The Law Council notes that in most jurisdictions the majority of regulatory functions are either overseen by, or entirely managed by, an independent statutory body. These bodies already have established positions for lay representatives, which the Law Council considers appropriate.

61. Where there is not already representation by lay persons on legal profession regulatory bodies, the Law Council does not oppose the appointment of non-legal practitioners, in principle, subject to maintaining majority representation by those with substantial legal practice experience.

62. At present, the Law Council understands the position is as follows:

    (a) the suggestion that there be lay representation on regulatory bodies is largely irrelevant in relation to New South Wales, Queensland and Victoria, given they all have independent statutory Offices of Legal Services Commissioners.

    (b) In the Northern Territory, there is lay representation on the Law Society's Ethics Committee and the Discipline Tribunal, but not on the Law Society of the Northern Territory's Council.

    (c) In 2012, the ACT Law Society invited the ACT Attorney-General's Department to identify two lay persons to join the Complaints Committee as lay members. Earlier this year the Attorney-General's office identified four people, of whom two were selected, however their integration was unsuccessful and currently the Law Society does not have lay representation, a situation that has not pertained for many years.

    (d) In Western Australia, the Law Council understands there is no lay representation, however, the Western Australian Legal Services Board is a statutory independent body and includes representation by the Western Australian Attorney-General, which would obviate the need for further lay representation.

    (e) In Tasmania, 2 out of 6 people on the Legal Profession Board must be lay people without legal qualifications.

    (f) In South Australia, the previous Disciplinary Board had lay representatives; however as of 1 July 2014 the Disciplinary Board has been abolished and replaced by a Commissioner, which is an independent statutory office. The Disciplinary Tribunal (also established on 1 July) includes five out of 15 members who are lay persons.

Attachment A: Profile of the Law Council of Australia

The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its Constituent Bodies on national and international issues, and to promote the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts and federal agencies on ways in which the law and the justice system can be improved. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world.

The Law Council was established in 1933, and represents 16 Australian State and Territory law societies and bar associations and the Large Law Firm Group, which are known collectively as the Council's Constituent Bodies. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Australian Capital Territory Law Society
- Bar Association of Queensland Inc
- Law Institute of Victoria
- Law Society of New South Wales
- Law Society of South Australia
- Law Society of Tasmania
- Law Society Northern Territory
- Law Society of Western Australia
- New South Wales Bar Association
- Northern Territory Bar Association
- Queensland Law Society
- South Australian Bar Association
- Tasmanian Bar
- The Large Law Firm Group (LLFG)
- The Victorian Bar
- Western Australian Bar Association

Through this representation, the Law Council effectively acts on behalf of 60,000 lawyers across Australia.

The Law Council is governed by a board of 23 Directors – one from each of the 17 Constituent Bodies and 6 elected Executive Directors. The Directors meet quarterly to set objectives, policy and priorities for the Law Council. Between the meetings of Directors, governance responsibility for the Law Council is exercised by the elected Executive, led by the President who usually serves a 12-month term. The Members of the 2014 Executive are:

- Mr Michael Colbran QC, President
- Mr Duncan McConnel President-Elect
- Ms Leanne Topfer, Treasurer
- Ms Fiona McLeod SC, Executive Member
- Mr Justin Dowd, Executive Member
- Dr Christopher Kendall, Executive Member

The Secretariat serves the Law Council nationally and is based in Canberra.