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[redacted]
Date 31 July 2026

Mr Stephen Bray
Chief Executive Officer and Commissioner
Legal Services Council
PO Box H326
Australia Square NSW 1215

By email: submissions@legalservicescouncil.org.au

Dear Stephen

Re: Enabling corporate (in-house) legal practitioners to support related entities of their employer

The Law Institute of Victoria ('LIV') welcomes the opportunity to provide its views to the Legal Service Council ('LSC') on potential amendments to the *Legal Profession Uniform General Rules* ('Uniform General Rules') to enable corporate legal practitioners whose employer is not a company to engage in legal practice for related entities of their employer.

The accompanying consultation paper seeks feedback on three questions centred around a proposal to import the concept of control in section 50AA of the *Corporations Act 2001* (Cth) ('Corporations Act') into the Uniform General Rules to provide greater flexibility to corporate legal practitioners working for non-company entities.

Consultation Paper

Overall, the LIV shares the LCA's support to pursue a less restrictive approach to determine the circumstances where a corporate legal practitioner can provide legal services to other related entities.

The LIV offers the following minor comments building on the LCA's comments on Page 9 of the Consultation Paper.

Conflicts of interest and professional conduct rules

The LCA noted that corporate legal practitioners may need additional guidance on the application of professional conduct rules, particularly those dealing with confidentiality and conflicts of interest, if the proposal is adopted. The LIV considers it critical that any guidance specify that:

- Corporate Legal Practitioners must assess whether acting for a particular entity may give rise to a conflict of interest (such as between their employer and the related entity). If such a conflict is reasonably likely to arise, it would be prudent for the Corporate Legal Practitioner to decline to act for both parties. The usual ethical considerations must be given in these circumstances, for instance, the Corporate Legal Practitioner must assess whether they hold confidential information from a former client entity which may be relevant to the same or a related matter, and/or whether a duty of loyalty might apply. In other words, the Corporate Legal Practitioner must still comply with the Australian Solicitors' Conduct Rules relating to former and concurrent client conflicts of interest.

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- The Corporate Legal Practitioner must clearly identify who the 'client' is in each matter. When advising within a group structure, a Corporate Legal Practitioner's client may change depending on the issue and the instructions provided. When advising related entities, the Corporate Legal Practitioner must ensure that those from whom they receive instructions and those to whom they provide advice are properly authorised members of the client group. (In the experience of the ethics lawyers at the LIV, taking many thousands of calls each year on the ethics advice line, the most common conflict problems stem from lawyers not being sure who their client actually is. This proposed situation is ripe for creating similar confusion.)
- Similarly, in relation to legal professional privilege, the Corporate Legal Practitioner will need to remain vigilant about maintaining privilege when circulating legal advice across entities to avoid an unintended waiver.

Guidance on the concept of 'Control'

The LIV shares the LCA's views that there will need to be guidance available to the profession on what might and might not be appropriate indicators of the requisite degree of 'capacity' as it relates to the *control* test in Subsection 50AA(1) of the Corporations Act. Guidance might suggest that the key indicators of capacity include:

- practical influence over decisions about financial and operating policies;
- patterns of behaviour that demonstrate influence, even if the influence exerted is not enforceable;
- control over board composition, including appointing or removing directors;
- control over voting processes, such as casting a majority of board votes;
- rights to block budgets, plans, annual reports or key appointments – i.e. functions that go beyond mere protective or passive rights.

The LIV appreciates the opportunity to provide its views to the LSC and welcomes the opportunity to engage further on matters relating to related entities. Should you wish to discuss any aspect of this submission further, please do not hesitate to contact me.

Sincerely yours,

[redacted]

Adam Awty
Chief Executive