

Dear Sir/Madam,

I am aware that both the Association of Corporate Counsel Australia (“ACC”) and the NSW Law Society have made, or intend to make, submissions in relation to the above consultation paper. I have provided some assistance to those organisations in this regard. As far back as November 2019, I assisted ACC with making its first formal submission to the Legal Services Council on the practical problem faced by in-house legal counsel arising from the definitions of “corporate legal practitioner” and “related entity” in the *Legal Profession Uniform Law* (“Uniform Law”) (see copy of submission attached). To date, no changes to the legislation have been made in response to that submission.

However, in addition to any of the more recent submissions being made, I have had a further thought about how this long-standing problem can be more easily resolved – although it would still require an amendment to **both** the Uniform Law and the Legal Profession Uniform General Rules (“Uniform General Rules”).

Section 6 of the Uniform Law presently defines “corporate legal practitioner” and “related entity” as follows:

“**corporate legal practitioner** means an Australian legal practitioner who engages in legal practice only in the capacity of an in-house lawyer for his or her employer or a **related entity**, but does not include a government legal practitioner.”

“**related entity**, in relation to a person, means—

(a) if the person **is a company** within the meaning of the Corporations Act—a **related body corporate** within the meaning of section 50 of that Act; or

(b) if the person **is not a company** within the meaning of that Act—a person specified or described in the Uniform Rules for the purposes of this definition;”

The Current Problem

The problem with the present definition of “related entity”, in the context of corporate legal practitioners **employed by companies**, is that a “related body corporate” (as defined in section 50 of the *Corporations Act*) limits the provision of legal services to the holding company (parent company) or its subsidiary companies in the same corporate group in which the corporate legal

practitioner is employed. It therefore fails to recognise the realities of modern corporate structures and practice where entities can be **controlled** by a company even though the company concerned does not hold more than 50% of the shares in that entity.

In many situations, companies in a corporate group structure which are not subsidiary companies (i.e. companies in which the holding company has 50% or less of the shares and are therefore **not** subsidiary companies) are nevertheless **controlled** by the holding company. In a situation such as this, **a corporate legal practitioner should be permitted to provide legal services to a controlled entity in the same corporate group that employs the practitioner.**

Suggested Solution

My submission is to amend the definition of “related entity” in **section 6** of the Uniform Law to read as follows:

“related entity, in relation to a person, means a related body corporate within the meaning of section 50 of the Corporations Act or a person specified or described in the Uniform Rules for the purposes of this definition;”

By simply amending the definition of “related entity” in **section 6**, the Uniform General Rules could then be used to create a “shopping list” of any such specified or described persons. The list could, for example, include entities that are not companies under the *Corporations Act 2001* such as statutory corporations (which would include universities and many other statutory corporations). The list could also include other entities which are **controlled** (as defined in **s.50AA** of the *Corporations Act*) by the employer entity of the corporate legal practitioner (which would include “associated entities” as defined in **s.50AAA** of the *Corporations Act*).

Meaning of Control

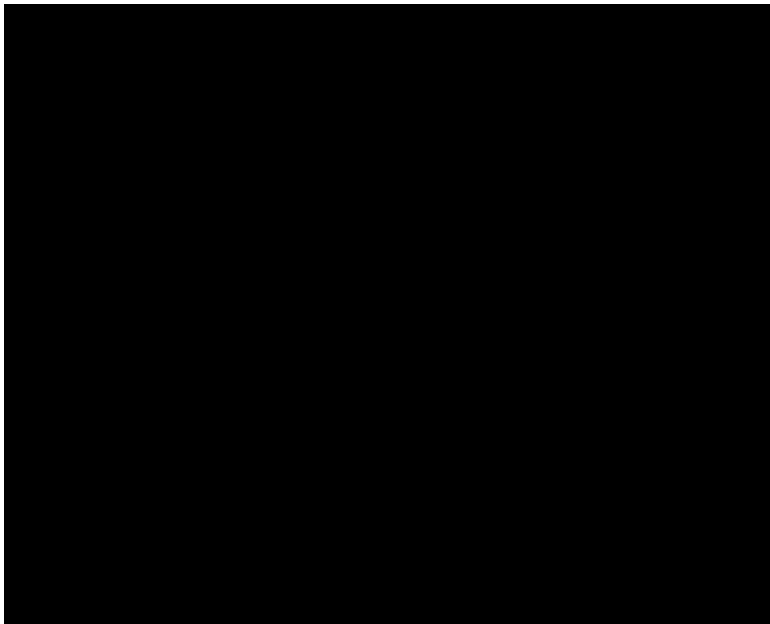
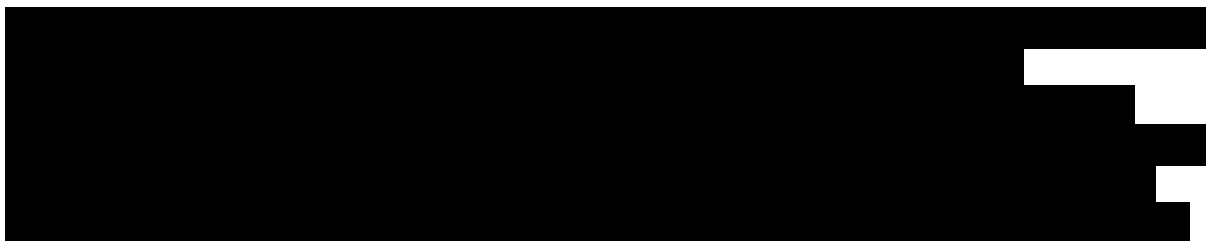
Section 50AA(1) of the *Corporations Act* defines control as follows:

“(1) For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.”

I believe the solution outlined above would resolve the vexed question for corporate legal practitioners of who they can provide legal services to without breaching the provisions of the Uniform Law.

Just to be clear, the above submission is being made in a private capacity and not on behalf of any legal organisation. Please do not hesitate to contact me should you require any further elaboration on this submission.

Yours sincerely,

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