Submission Template —Enabling corporate legal practitioners to support related entities of their employer

Please complete all relevant sections. Use plain language and provide evidence or examples where possible. You may attach supporting documents.

A. Submitter details

- **Organisation (if applicable):** Victorian Legal Services Board + Commissioner (**VLSB+C**)
- **Primary contact name and role/title:** Jasma Johnson-Singh, A/Manager, Policy and Regulatory Strategy
- **Email:** [redacted]
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- **Jurisdiction(s):** VIC

B. Confidentiality and publication

- **Do you request that your submission (in full) be treated as confidential?** No
- **If 'No', may the Council publish your submission on its website, including your name/organisation?** Yes

C. Detailed responses to consultation questions

Question 1 — Practical operation of the current framework

Does the current definition of "related entity" present practical difficulties for corporate legal practitioners employed by entities that are not a company within the meaning of the Corporations Act?

1. **Position:** Yes.
2. **Please provide details of any practical difficulties experienced:**

   The current definition does present practical difficulties. VLSB+C has previously received queries from corporate practitioners employed by entities that are not a company within the meaning of the *Corporations Act* – including educational institutions, churches and public health service providers – about the extent to which they can act for related entities.

   For example, in mid-2025 VLSB+C received an enquiry from a public health service established under the *Health Services Act 1988* (Vic). The organisation employed Australian legal practitioners holding corporate practising certificates and was due to amalgamate with other public health services that did not employ legal practitioners. Before the amalgamation, the organisation wanted its legal practitioners to provide legal services to those other public health services.

   Because the organisation was not a company within the meaning of the *Corporations Act*, and because the other public health services were not "related entities" under the current definition in the Uniform Law, the practitioners could not provide legal services to those other health services under their existing corporate practising certificates. VLSB+C instead advised that, subject to any conflict issues being considered, the legal practitioners could potentially provide services by way of secondment, provided the receiving health service was treated as the employer for the purposes of the definition of "corporate legal practitioner" and the practitioners recorded the relevant employment assignment with VLSB+C.

This example shows that the current definition can produce practical and technical barriers even where organisations are closely connected, and there appears to be no obvious consumer protection reason to prevent the legal services being provided. It also illustrates that the current framework can require workarounds, such as secondment arrangements, rather than allowing corporate legal practitioners to support connected organisations in a straightforward way.

These difficulties are not confined to corporate legal practitioners employed by entities outside the *Corporations Act*, similar uncertainty can also arise for practitioners employed by companies, where the narrow and uncertain definition of "related entity" may make it unclear whether they can advise connected entities.

3. **Additional comments (optional):**

Question 2 — Reliance on the concept of "control" under section 50AA of the Corporations Act

If this issue is addressed by an amendment to the Uniform General Rules, do you support relying on the definition of "control" in section 50AA of the Corporations Act to capture related entities of entities that are not a company?

1. **Position:** Support as an interim measure

   VLSB+C supports relying on the definition of "control" in section 50AA of the *Corporations Act* as a pragmatic solution to address the current gap while legislative reform to the Uniform Law is not available.

   The definition of "control" focuses on whether one entity has the practical capacity to determine another entity's financial and operating policies. This appears sufficiently flexible to capture a broad range of relationships where there is substantive influence or control, and therefore an effective mechanism for addressing the concerns identified in this review.

2. **Are there any alternative approaches the Council should consider?**

   The main alternative the LSC should consider is broader legislative reform. VLSB+C has previously submitted that the concept of "related entity" should be removed from the Uniform Law, including from the definition of "corporate legal practitioner".

   In our April 2019 submission (Attachment 1), VLSB+C identified a number of problems with the current definition. In particular, we noted that the definition is difficult to understand and apply, creates an artificial distinction between company and non-company employers, and is used for different policy purposes in different parts of the Uniform Law.

In our November 2019 submission (Attachment 2), VLSB+C clarified that this proposal was intended to broaden, not limit, the scope of corporate legal practice. Our position was that corporate legal practitioners should be able to provide legal services requested by their employer under a corporate practising certificate, rather than applying for a principal practising certificate merely to overcome the narrow and uncertain definition of “related entity”.

Corporate legal practitioners and their employers are generally best placed to identify which entities are sufficiently connected within their organisational structure, subject to the practitioner’s professional obligations, including duties to avoid conflicts of interest and to provide independent advice. This approach would also avoid the difficulties associated with applying formal statutory tests for relatedness or control.

VLSB+C continues to consider this the most complete solution because it would remove the artificial two-limb distinction in the current definition and avoid treating corporate legal practitioners differently based on the corporate status of their employer.

3. **Rationale:** See above.

4. **Additional comments (optional):**

Question 3 —Potential implications and unintended consequences

If the potential reforms outlined at Q2 are progressed, could this cause any unintended consequences, and if so how should these be addressed?

1. **Position:** Yes.

2. **Please identify any potential implications or unintended consequences:**

As noted in our response to Question 2, VLSB+C supports the proposed rule as an interim measure. However, the proposal would retain the current inconsistency in the definition of “related entity” and would not be a complete solution. The consideration of whether or not an entity meets the definition will continue to be complex and based on business structure which is at odds with the objectives of the Uniform Law.

As outlined in VLSB+C’s April 2019 submission, the current definition applies different tests for determining whether an entity is related, depending on whether the employer is a company within the meaning of the *Corporations Act*. This creates an artificial distinction for which there is no discernible policy rationale, or any evident consumer protection reason why the ability of a corporate legal practitioner to advise a related entity should depend on the employer’s business structure. The objectives of Chapter 3 of the Uniform Law support a wide variety of business structures, provided consumer protection is not compromised. The Uniform Law does not otherwise seek to impose different consumer protection standards because of different business structures.

The proposed rule would not address those broader issues. It would leave the two-limb structure in place and continue to treat corporate legal practitioners differently depending on their employer’s business structure. In that sense, it would remain an interim and incomplete solution, rather than a substitute for broader legislative reform.

3. **Are there any safeguards, limitations or clarifications the Council should consider?**

   If the reform progresses, and given the complexity of this regulatory area, it would be helpful for the LSC to provide guidance and examples of the types of company structures that may satisfy the control test in section 50AA to ensure a consistent implementation approach. The profession may also benefit from information alerting them to the importance of considering any relevant conflict of interest issues and whether professional indemnity insurance arrangements cover the proposed legal services before advising a related entity.

   Importantly, the proposed new Rule should not displace the need to continue pursuing broader legislative reform to address the underlying issues with the definition of “related entity”. Broader legislative reform should continue to be pursued to achieve a clearer and more consistent framework.

4. **Additional comments (optional):**

D. Attachments (optional)

Attachment 1 – VLSB+C submission to LSC consultation paper April 2019

Attachment 2 – VLSB+C submission to LSC consultation paper November 2019

Lodgement and deadline

- **Submit by email: submissions@legalservicescouncil.org.au**
  (If you require an alternative lodgement method or accessibility adjustments, please contact the Council.)
- **Closing date:** 22 July 2026
- **General enquiries: lsc@legalservicescouncil.org.au**