



**Message from the CEO, Megan Pitt**

**Welcome to our September newsletter.**

Over the last three months, and despite the pandemic, the Legal Services Council, its Committees and our secretariat have been extremely busy, working on some significant matters that affect the legal profession in the Uniform Law States.

This edition details the recent work of the Council, Admissions Committee and the Law Admissions Consultative Committee, for which we provide secretariat services.

Our important liaison with key stakeholders in Sydney and interstate that continues via webex, zoom and MS teams which we are improving as time goes on, is mentioned.

Our recent consultations on interest on fidelity fund claims, MIS rules and an urgent rule to resolve unintended consequences of a Commonwealth reform on litigation funding, that could otherwise have adversely affected some solicitors and law practices, are also covered.

Although the effects of the pandemic are still present in NSW and have changed our operations to some extent, we remain concerned about our Victorian colleagues and many of our Uniform Law partners, whose work and lives have been more significantly impacted.

We send our positive thoughts and best wishes to you all, and hope that your circumstances, which are showing some good signs of improvement, continue on this trajectory so that we can meet again in person, in the not too distant future.

**Council News**

**Legal Services Council meetings**

On 30 July, the Council met by webex video conference. At the meeting, the Council considered revised guidance material on e-conveyancing and the Uniform Law prepared by the Victorian Legal Services Board and Commissioner (VLSB+C); proposed amendments to the Australian Solicitors Conduct Rules (ASCR); the interest rate payable on fidelity fund claims; and Commonwealth litigation funding reforms to regulate litigation funding as managed investment schemes.

On 23 September, the Council held its final meeting with its current membership, prior to its term expiring on 13 October 2020. The Council gave further consideration to the ASCR, interest on fidelity fund claims, finalised its EOFY finance statements and noted its unqualified audit by the NSW Audit Office.

At this meeting, the Chair and Council members made farewell remarks and acknowledged the achievements of the Council, supported by our secretariat, over the past six years, which will be reported in our next newsletter.

**Admissions Committee**

As the term of Committee member, Professor Bronwyn Naylor, RMIT, ended on 30 June, the Committee welcomed Professor Michael Stuckey, Dean, College of Law and Justice, Victoria University, to its September meeting.



Professor Bronwyn Naylor      Professor Michael Stuckey

The Committee continues its work on the admission of foreign lawyers, both unconditional and conditional, and has reconvened a working group to map a way forward through stakeholders' diverse views. The group met in August and the Committee adopted its interim recommendations on 3 September.

On 11 September, the LSC's Megan Pitt and Cora Groenewegen, as the Committee's secretariat, met by zoom with representatives of the Victorian Legal Admissions Board (VLAB) Deborah Jones, Kristen Murray and Maria Di Palma and the Legal Profession Admission Board (LPAB) Chris Banks and Leigh Plater, to inform them of developments in

this area and to invite their views on new and modified proposals. After this informal consultation on those recommendations, the group is scheduled to meet again in November.

As conditional admittees fulfil the conditions of their admission and seek unconditional admission, the Committee is considering how current processes and costs of variation and revocation of conditions in different participating jurisdictions might be streamlined.

### **Law Admissions Consultative Committee (LACC)**

Following a revision of LACC's secretarial arrangements, the LSC offered to host LACC's web pages on the LSC site. Documents relating to recent projects and current topics are linked on the site. The LSC holds and will forward on request, LACC historical documents including discussion papers, proposals and submissions, and those regarding a limited 2015 review of the academic areas of knowledge required for admission.

In September, the Committee finalised its consideration of whether admitting authorities should accredit only providers and courses approved by the Tertiary Education Quality and Standards Agency, deciding that each admitting authority retains discretion to require prior approval by the Agency.

The Committee acknowledged the challenges faced by the admitting authorities and law school teachers during the pandemic, and deferred indefinitely, the adoption of the new descriptions of the Prescribed Areas of Knowledge, initially planned for 1 January 2021.

## **Working with our stakeholders**

### **Designated Local Regulatory Authority (DLRA) meetings**

On 14 May and 13 August, Megan Pitt hosted meetings with the DLRA's from NSW, Victoria and Western Australia, as part of this regular series of meetings.

This meeting was attended by Fiona McLeay, Victorian Legal Services Commissioner; Kerri-anne Millard, VLSB+C; Heather Moore and Anthony Lean, Law Society of NSW; John McKenzie, NSW Legal Services Commissioner; Greg Tolhurst, NSW Bar Association; and Libby Fulham and Russell Daily, LPBWA.

Topics discussed included a report on the recent LSC meetings, DLRA's policies, guidelines and directions, the ASCR, interest payable on fidelity fund claims, and Commonwealth litigation funding reforms.

Other matters discussed included the LCA's sexual harassment roundtable and initiatives being taken by DLRA's to address sexual harassment, lawyer well-being initiatives including the NSW Law Society's solicitor outreach service,

the VLSB+C's review of continuing professional development, an update on WA joining the UL scheme and the impacts of COVID-19 on the legal profession and regulatory responses by DLRA's to assist the profession.

These meetings continue to provide a valuable opportunity for the LSC and the DLRA's to discuss critical legal regulatory issues, share information and experiences and to work towards a consistent approach to common issues across all UL jurisdictions.

### **Australian Legal Regulators bi-monthly teleconference**

On 2 July, the NSW Legal Services Commissioner, John McKenzie chaired the bi-monthly Australian national regulators' teleconference which was attended by legal regulators from all Australian jurisdictions.

Matters discussed included the postponement of CORO to 2021, cross-jurisdictional case co-ordination and sexual harassment action being undertaken by legal regulators around Australia.



John McKenzie AM  
NSW Legal Services Commissioner

### **Law Council of Australia (LCA) – National Roundtable addressing sexual harassment in the legal profession**

On 8 July, at the invitation of LCA, Megan Pitt attended a zoom national roundtable addressing sexual harassment in the legal profession. The event was hosted by the LCA's President Pauline Wright with about 40 participants attending by zoom, to consider action that the LCA proposes to take to address sexual harassment in the legal profession nationally.



Pauline Wright  
President, Law Council of Australia

The LCA is proposing law reform and drafting sexual harassment policies and guidelines to apply to law practices nationally.

The LCA sought support for its proposals and attendees were generally supportive of the LCA's approaches, although many could not speak for their organisations or comment specifically until the details of the proposals are distributed. The LCA will undertake further consultation with its constituent bodies and stakeholders over the coming months.

## Meeting with new CEO, Law Society of New South Wales (LSNSW)

On 16 September, Megan Pitt met with the newly appointed CEO of the LSNSW, Sonja Stewart.



Sonja Stewart  
CEO, Law Society of New South Wales

Discussions covered future liaison between the LSC and LSNSW, current legal regulatory issues, the UL data base and the Australia Legal Profession Register.

## Meeting with new CEO, Law Council of Australia (LCA)

On 24 September, Megan Pitt met with the recently appointed CEO of the LCA, Michael Tidball. Discussions covered the Australian Solicitors Conduct Rules (ASCR), the LCA's proposals to address sexual harassment and other projects relevant to the LSC and LCA.



Michael Tidball  
CEO, Law Council of Australia

## Meeting with Commonwealth Attorney-General's Department

On 7 September, Megan Pitt and Chelly Milliken, Senior Principal Policy Officer, met with Rebecca Mills, Lani Rankin, Jennifer Blood and Maxine Jelic from the Family Violence Policy and Programs Section, Family Safety Branch, Commonwealth Attorney-General's Department.

The purpose of the meeting was to discuss the outcomes of the consultation paper 'Options for improving the family violence competency of legal practitioners' and how they might be progressed. Among other things, the consultation paper sought feedback on options for enhancing the integration of family safety training into university learning, pre-admission training requirements and post-admission continuing professional development requirements. We discussed the process for making amendments to the Uniform Admission and CPD Rules.

## LSC's new Information and Digital Services Business (IDS) Partner

On 9 September, the LSC formally welcomed Henry Chou, (Manager, IDS Business Partner), Corporate Services, of the NSW Department of Community and Justice. In attendance were Megan Pitt, Bridget Sordo and Tina O'Brien.

Henry will be coordinating a number of important projects including the upgrade of computer hardware and the deployment of Windows 10 for all LSC staff. This will provide staff with more flexibility to continue to deliver strategic outcomes whether in the office or working remotely.



Henry Chou  
Manager Information and Digital Services Business  
(IDS) Partner

## Recent consultations

### Interest rate payable on fidelity fund claims

On 20 August, the Council commenced a public consultation on the interest rate payable on fidelity fund claims. The interest rate is fixed by section 243(2) of the Uniform Law in the absence of specific provision in the Uniform General Rules.

The Council considers it appropriate to reduce the interest rate from the current rate of 5% for the following reasons:

- The current rate does not reflect the rate of return which can be achieved by investing the corpus of the fidelity fund.
- Paying out disproportionately high amounts of interest, particularly on high-value claims, is problematic because it decreases the sustainability of the fidelity fund.
- This would more closely represent the rate of return which claimants might have expected to achieve had the claim been allowed immediately after it was made.
- Applying a formula to calculate the interest payable better reflects the policy reasons for paying interest irrespective of the economic conditions at the time.

The consultation closed on 18 September 2020 and submissions are under consideration.



### Report on Review of MIS Rules

On 27 July, the Council published a report setting out the findings and decisions of its review of rules 91A – 91D of the Uniform General Rules 2015.

Following consultation, the Council has decided on the following actions:

1. Revise the existing guidance material to produce:
  - (a) a short statement of the purpose of section 258 (that it operates to protect individual clients and community confidence in the legal profession by restricting the involvement of law practices in certain forms of financial intermediation), and
  - (b) brief plain English technical guidance summarising the operation of the MIS Rules for law practices, including the effect of rule 91C and section 258(4).
2. Request an amendment to rule 91B to permit a law practice to provide legal services in relation to an MIS, in circumstances where an associate of the law practice has an interest in the MIS or MIS operator but the provision of those legal services does not give rise to a conflict between the duty to serve the best interests of the client and the interests of the associate of the law practice.

On 27 July, the Council commenced a public consultation on the revised guidance material and is considering the feedback it received.



## Uniform Rules

### Uniform General Rule 91AB

The Council has made an urgent amendment to the Uniform General Rules to resolve a serious and unintended consequence of the Commonwealth reforms to regulate litigation funding as managed investment schemes.

Section 258 of the Uniform Law prohibits law practices in NSW and Victoria from engaging in certain activities in relation to 'managed investment schemes', as defined in the *Corporations Act 2001* (Cth).

The Corporations Amendment (Litigation Funding) Regulation 2020 (Cth) has the effect that litigation funding schemes created on or after 22 August 2020 are no longer excluded from the statutory definition of managed investment schemes.

The Legal Profession Uniform General Amendment (Litigation Funding Schemes) Rule 2020 ensures that law practices in NSW and Victoria do not contravene section 258 by:

- Promoting or operating a litigation funding scheme (section 258(1)(a)), or

- Providing legal services in relation to a litigation funding scheme or the responsible entity for the scheme if any associate of the law practice has an interest in the scheme or the responsible entity for the scheme (section 258(3)).

The new Rule ceases to have effect on 22 August 2021. The Council will undertake a public consultation before making an ongoing rule in relation to this issue.

The Council has asked designated local regulatory authorities to adopt a 'no action' position in relation to rule 41 of the Legal Profession Uniform Law Australian Solicitors Conduct Rules 2015.



## Secretariat

### Welcome Ella Howard

On 1 October, Ella Howard will join us as our new Principal Policy Officer. Ella has extensive experience in legal practice including at the Australian Government Solicitor, Royal Commission into Institutional Responses to Child Sexual Abuse, the Law Society of NSW and the NSW Electoral Commission.



Ella Howard  
Principal Policy Officer

### For more information

Visit the LSC website: [www.legalservicescouncil.org.au](http://www.legalservicescouncil.org.au)

Or contact us at [lsc@legalservicescouncil.org.au](mailto:lsc@legalservicescouncil.org.au)