

24 October 2018

Ms Libby Fulham
Executive Director
The Legal Practice Board of Western Australia
Level 6, 111 St Georges Terrace
PERTH WA 6000

By email: general@lpbwa.com

Dear Ms Fulham

SOLICITORS' USE OF THE TITLE 'SPECIAL COUNSEL'

Thank you for the opportunity for the Law Society of Western Australia (**Law Society**) to comment on the Legal Practice Board's notice of 6 August 2018.

The Law Society:

1. takes the view that the use of the title 'special counsel' remains appropriate for solicitors working in law firms or in Government agencies where they elect to do so; and
2. does not support moves to prohibit or regulate use of the term in either the private or public sectors of the profession.

The reasons for this are articulated below.

Firstly, the title 'special counsel' has been in use for decades, across the whole of Australia and overseas. It is used consistently by many firms to denote employed lawyers, promoted by their firms in recognition of their seniority and experience, but who are not partners of the practice. Prohibiting a widely used title only in Western Australia may itself cause confusion for clients, as law firms will have to agree a different title for those employed lawyers, and be careful to explain the change to clients, particularly where a matter is interjurisdictional. It may also place Western Australian lawyers at a competitive disadvantage.

If there are individual instances of misuse of the title 'special counsel', then, rather than a blanket prohibition, the Law Society considers the appropriate way of resolving this is the existing complaint-handling mechanisms in Western Australia that deal with complaints relating to misleading or deceptive conduct.

Secondly, the WA profession is an amalgam, and it can be proper to have both counsel and 'special' counsel within the amalgam who are not at the bar. It is unlikely that such a person would be confused for 'senior' counsel, particularly given that barristers are not usually briefed directly by the client.

However, if there are instances where the title 'special counsel' is used inappropriately or causes confusion, the Law Society suggests educational material be prepared for solicitors reminding them that titles convey certain meaning to

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members of the public, and they therefore need to ensure they have appropriate standards for those titles, or they risk engaging in misleading or deceptive conduct.

The Law Society ultimately makes the following recommendations:

1. There be no changes to the use of title 'special counsel' in Western Australia.
2. The Legal Practice Board, in consultation with the Law Society of Western Australia and the Western Australian Bar Association, develop and promote:
 - a) educational material for solicitors about the risk of engaging in misleading or deceptive conduct through use of the title 'special counsel'; and
 - b) information for the public about engaging legal practitioners and the titles that they use.

If you wish to discuss the above further, please contact Mary Woodford, General Manager Advocacy, on 9324 8646 or at mwoodford@lawsocietywa.asn.au.

Yours sincerely



Hayley Cormann
President