

29 August 2014

Mr John Syminton
Chairperson
Legal Practice Board of Western Australia
PO Box 5720
St Georges Terrace
PERTH WA 6831

Dear Mr Syminton

PROPOSED PRACTICE MANAGEMENT REGULATION

Thank you for your letter dated 14 May 2014 requesting the views of the Society on the proposed Practice Management Regulation and for taking the time to meet with representatives of the Society on 22 July 2014 to discuss it.

The following comments are provided for your consideration:

1. General issues identified in the paper

As a general principle, the Society considers there is a very real need for training practitioners who are moving from being an employee to a partner/principal position. Many of such practitioners are recently admitted and are assuming the role of partner/principal which places them, for the first time, in the position of being an employer, potentially supervising other practitioners; dealing with human resources issues; trust money/accounts; risk management decisions; budgeting; conflict of interest decisions; credit control; GST, etc.

The Society is also of the view that many of the practitioners in the above category may at some stage be starting up their own firms and, given that, statistically, sole practitioners and small practices have a higher incidence of PI claims, it is the view of the Society that the training, as envisaged, is desirable.

2. The approach to standardise training for targeted practitioners

The Society notes that the College of Law separates their New South Wales (NSW) Legal Practice Management Course into the following categories:

- Large (35+ Partners)
- Corporate/Government
- Sole Practitioners
- Small-Medium Partner firms
- Community Legal Centres

The Society would like to see as much consistency between each state as possible and Western Australia (WA) should not look to "reinvent the wheel" – instead, WA should, where possible, look to utilise existing providers and, if possible, similar course content. Adopting this philosophy should facilitate

reciprocal recognition of a principal having completed an approved course in another state.

With regard to these categories the Society queries the need for "corporate/government" and "community legal centres" to undertake such training given that they do not have principals/partners. Having said that, a person ceasing to be employed by Government or a CLC, should be required to undertake training unless previously "qualified".

3. Content to be included in potential training and delivery mechanisms

It would be useful in WA for courses to be available on-line to assist remote practitioners in particular to obtain the requisite training. If there is to be an examination at the end of the course (as would appear to be necessary), remote practitioners could arrange for an approved invigilator to be present.

Course content: As stated in 2 above, the Society envisages similar course content to existing programmes already available in the Eastern States. We have provided a list of topics attached that we would like to be considered for inclusion in such a course. The Society also suggests that the session on trust accounting be extended to include other non-trust accounting issues as included in the suggested list.

4. Criteria for training providers

The Society would like to see the Legal Practice Board of Western Australia (LPBWA) consider approving providers of the new course in the same way as certification is given to approved Continuing Professional Development (CPD) providers, subject however to approval by the LPBWA of course content.

5. Summary of comments/questions in response to paper.

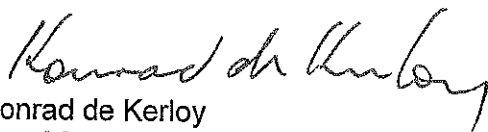
Some observations and questions in response to the paper that the Society would like to know are:

- a) Apart from attending the course, what other costs are envisaged, eg LPBWA administration costs?
- b) Will there be a fee for the provider to be approved?
- c) Will there be reciprocal recognition of a principal having undertaken an approved course in another state?
- d) If courses are conducted for different categories (sole practitioners, small-medium, etc), will certification in one category be certification for all categories?
- e) Is it proposed that there will be sufficient courses conducted throughout the year such that practitioners being promoted or setting up on their own account are not unduly delayed or disadvantaged? (otherwise a grace period could be considered) The proposed initiative should not create a restraint of trade situation.
- f) Will there be consideration given to on-line courses for remote practitioners.

- g) Looking at the NSW course outline, how does "corporate" and "government" fit in where they don't have principals/partners? Presumably once a practitioner steps outside of those areas and sets up practice, he or she would be required to undertake the course.
- h) Once practitioners have received the qualification will they be required to undertake a refresher course?
- i) The Society queries the proposed requirements in a situation where the practitioner changing status practises in a different state from his or her firm's principal place of business.
- j) Will consideration be given to whether there should be a category of existing principals who should, retrospectively, be required to undertake the course? (eg as at the starting date of the Regulation. An example could be if in the last 2 years they have become a principal but have held a practising certificate for less than 5 years). Alternatively, grandfathering provisions need to be included. If there is to be retrospectivity then consideration of a grace period of, say, 6 months to allow completion of the course.
- k) Will the practising certificates display different wording (eg "Principal's Practising Certificate")?
- l) Under the current Act there are certain restrictions placed upon people who carry a qualified practising certificate (ie, anyone who doesn't have an unrestricted one). Will the proposed Regulation impact on that aspect of the Act? Will the Act require any amendment?
- m) Will barristers be required to undertake the course?
- n) It would appear that in Queensland, practitioners (who are not compliant with the requirements) are not able to "advertise or hold themselves out to be a 'partner' or 'sole practitioner' as such conduct may be considered misleading or deceptive" – will that be the same in WA?

Once again, I thank you for the opportunity to provide comment to the LPBWA on this matter. If the LPBWA would like any further input from the Society we would be pleased to assist.

Yours sincerely


Konrad de Kerloy
President

ATTACHMENT

SUGGESTED COURSE CONTENT - PRACTICE MANAGEMENT COURSE

Using the categories contained in the LPB paper:

1. How to run the business of a law practice.

- Marketing
- Practice finances (budgeting, reporting, credit control, etc)
- Quality Assurance/compliance (establishing policies and procedures)
- Awareness of fraud
- Assessing credit risk of clients
- Risk Management strategies
- Business continuance planning
- Strategic practice management
- IT policies and considerations
- Equipment registers
- Firm structure (and statutory requirements for each type)
- Insurances (key man, PI, top up insurance, property, loss of business, etc)
- Equipment/premises
- Responding to tenders
- Business plan
- Business coaching
- Library and research resources
- Precedents
- Partnership agreements, goodwill, exit strategies, etc.
- Managing the office generally
- The general obligations of practitioners acting as a trustee that arise outside of the statutory obligations

2. The responsibilities and obligations of managing a law practice.

- Compliance with the LPA and Professional Conduct Rules
- LPB requirements
- PI insurance (categories, notifications, undertakings for compulsory training, excesses, penalties, etc)
- Supervision of practitioners and support staff
- OHS
- Workplace relations/employment laws
- Staff training and mentoring
- Conflict of Interest
- Succession planning
- Costs agreements (including how to make a retainer and how to terminate a retainer and deal with client complaints (about fees and otherwise)
- Invoicing

- File management
- Mental Health and Wellbeing considerations.
- CPD requirements
- Delegation and career paths for staff
- Privacy Act
- Safe custody and client documents
- Pro Bono
- Legal Aid
- Ethical decision making
- Advertising
- Court protocols

3. Acquiring an understanding of, and applying, the relevant professional conduct rules relating to client care and communication.

- Studying the Professional Conduct Rules
- Establishing and maintaining a policy of "Client Focus"
- Managing client expectations
- Clients rights for recourse
- Vexatious clients.

4. Acquiring an understanding of the principals, statutory requirements and rules of trust accounting and other financial matters.

- Trust account rules, regulations and authorities required from clients
- Unclaimed moneys
- Superannuation payments
- Check transit registers
- Obtaining moneys on trust
- Disbursements and anticipated disbursements
- Reporting requirements
- Trust auditing
- GST
- Estate moneys
- Interest on client moneys
- Cashflow
- Review and control of WIP/disbursements
- Time recording
- Avoiding bad debt
- Proactive client payment plans

