



Message from the CEO, Megan Pitt

Welcome to our September newsletter.

Despite the further interruptions to life in Sydney and Melbourne caused by the pandemic in recent months, the Legal Services Council (Council) has remained very busy, working on a range of Uniform Law matters.

This newsletter provides information about two new Uniform Rules that recently commenced: the Legal Profession Uniform General Amendment (Interest Rate) Rule 2021, and the Legal Profession Uniform General Amendment (Managed Investment Schemes) Rule 2021. Each of these Rules were developed after substantial consultation with local regulatory authorities and Uniform Law stakeholders.

The Council is grateful for the views and feedback provided by those bodies, which have enhanced the consultation process and the final form of the amendments.

This edition of our newsletter also sets out information about the recent meetings of the Council and its committees, the Admissions Committee and the Audit and Risk Committee, as well as the Law Admissions Consultative Committee, for which we provide secretariat services.

Council News

Legal Services Council

On 6 July, the Council met by videoconference. At this meeting, the Council considered the proposed amendments to Rules 91B and 91BA of the Legal Profession Uniform General Rules 2015 which relate to managed investment schemes; and the Law Council of Australia's (LCA) proposed further amendments to Rule 42 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015.

The Council also considered a proposed amendment to the definition of "Board" in the Legal Profession Uniform Admission Rules 2015 to accommodate Western Australia (WA) joining the Uniform Law scheme and discussed the possibility of holding a Council meeting in WA at the earliest opportunity once WA has joined the Uniform Law scheme.



L-R: Juliana Warner, Noel Hutley SC, Alan Cameron AO (Chair) Joshua Thomson SC, Liz Harris, Murray Baird

On 28 September, the Council met again by videoconference. The Council considered proposed amendments to provisions governing anti-discrimination and harassment in the Legal Profession Uniform Conduct (Barristers) Rules 2015 developed by the Australian Bar Association (ABA), work done by the Admissions Committee on the admission of foreign lawyers and the 2020-2021 Annual Reports of the Council and the Commissioner for Uniform Legal Services Regulation (Commissioner).



L-R: Alan Cameron AO (Chair), Megan Pitt, Liz Harris, Murray Baird, Noel Hutley, Juliana Warner

New members of the Admissions Committee

On 1 July, Mr Ross Drinnan and Dr Elisabeth Peden SC began their terms on the Admissions Committee.

Mr Drinnan is a partner at the law firm, Allens, with a practice focus on commercial disputes, class actions and regulatory investigations and enforcement. He is currently the Chair of Law Firms Australia and the Treasurer of the LCA.



Mr Ross Drinnan



Dr Elisabeth Peden SC

Dr Peden is a barrister, accredited mediator and independent expert based in Sydney. She has law teaching experience at the University of Sydney and is the examiner in Evidence and Contracts for the Law Extension Committee. She is also an examiner and member of the NSW Bar Association Education Committee.

We welcome Ross and Elisabeth.

On 3 September, the Hon Justice Trish Henry resigned from the Admissions Committee due to another role she has been asked to undertake on behalf of the Supreme Court of NSW. Justice Henry's appointment commenced on 1 July 2019. Since that time, she has called on her large law firm and judicial experience to make an invaluable contribution to the Admissions Committee's work, including to the Foreign Lawyers Working Group at its several meetings in 2020 and 2021.

The Council and the Admissions Committee thank Justice Henry and wish her well.



The Hon Justice Trish Henry



The Hon Justice Francois Kunc

To fill that position, on 28 September the Council appointed the Hon Justice Francois Kunc of the Supreme Court of NSW.

We welcome Justice Kunc as well.

Admission of foreign lawyers

Public consultation on a draft rule to amend the Admission Rules relating to the academic prerequisites for admission, and the exercise of the admitting authority's power to exempt an applicant for admission from further study, closed at the end of July.

On 17 August, Cora Groenewegen, Principal Policy Officer, LSC Secretariat, met with the NSW Parliamentary Counsel's Office's John Ledda, Deputy Parliamentary Counsel, and Jacqueline Edwards, Assistant Parliamentary Counsel, to discuss the draft rule in the light of issues raised by stakeholders. On 19 August, the Admissions Committee's Chair, Acting Justice Emmett, also attended a further meeting.

These meetings were a very efficient and productive means of turning the Committee's policy objectives and stakeholders' suggestions into a final draft rule.

On 2 September, the Admissions Committee considered all stakeholders' responses received to that date, and the final draft rule. It unanimously agreed that the final draft rule was a way forward through diverse views and incorporated stakeholder comments and concerns, where possible, in an instrument that is clear, unambiguous and flows well for the reader.

Readers will recall that in May the Council's CEO and Cora Groenewegen met with representatives of the NSW Department of Communities and Justice (NSW Department) and the Victorian Department of Justice and Community Safety (Victorian Department) to discuss the Council's recommendation to the Standing Committee of Attorneys General that the Uniform Law be amended to broaden the scope of conditional admission. On 13 September, a similar meeting was held to brief the Departments on the meaning and effect of the final draft rule. The Chair of the Victorian Legal Admissions Board (VLAB) David Habersberger QC, VLAB's CEO, Deborah Jones, and Principal Policy Officer, Kristen Murray, attended this meeting and contributed information about how the proposed rule would be applied by admitting authorities.

The Admissions Committee has submitted the final draft rule to the Council. In developing the final draft rule, the Admissions Committee has relied on the time and expertise of the admitting authorities and NSW Parliamentary Counsel's Office. These have been generously and patiently given, for which the Admissions Committee is very grateful.

New members of the Law Admissions Consultative Committee (LACC)

Justice Trish Henry was the nominee of the Chief Justice of NSW on LACC, and for the reasons described above, has resigned from LACC. LACC members appreciated Justice Henry's contribution and wish her well in her new role. As yet, a replacement for Justice Henry has not been named.

Acting Justice Porter's appointment to the Tasmanian Board of Legal Education has expired. As His Honour declined the offer of re-appointment, he is no longer Tasmania's LACC representative. On behalf of all LACC members, the Chair expressed appreciation to Acting Justice Porter for his work on the Committee.



The Hon Acting Justice David Porter AM



The Hon Justice Robert Pearce

The Hon Justice Robert Pearce of the Supreme Court of Tasmania has been appointed to the Tasmanian Board of Legal Education, and as its Chair. As Tasmania's new nominee to LACC, we look forward to working with Justice Pearce at LACC's November meeting, and thank Luke Rheinberger, the Board's Secretary, for attending the June meeting in the interim.

Law schools named in LACC's Uniform Principles

LACC has been concerned to remind stakeholders that all jurisdictions applications for admission are each considered on their merits. To that end, if a law course provider is named in LACC's Uniform Principles, there is no advantage conferred on that provider's graduates when seeking admission to the legal profession in an Australian jurisdiction.

Annual audit process

On 3 September, the Council's CEO and Senior Executive Officer, Bridget Sordo, met with the members of NSW Audit Office and the NSW Department's Finance Team to cover off outstanding items in the audit of the draft combined FY2021 financial statements of the Council and Commissioner.

On 16 September, the Council's Audit and Risk Committee met with Megan Pitt and Bridget Sordo, and staff from the NSW Audit Office and the NSW Department's Finance Team, to endorse the combined FY2021 financial statements and recommend to the Council that those statements be adopted. The Audit Office also delivered its report which confirmed the audit resulted in an unqualified opinion audit outcome.

The Council is grateful for the continuing and excellent assistance provided by the NSW Department's Finance Team led by Joy Milag, Director Financial Management and Reporting with SokBee Lim, Manager, Companies and Concession Capital and Ken Chaves, Strategic Finance.

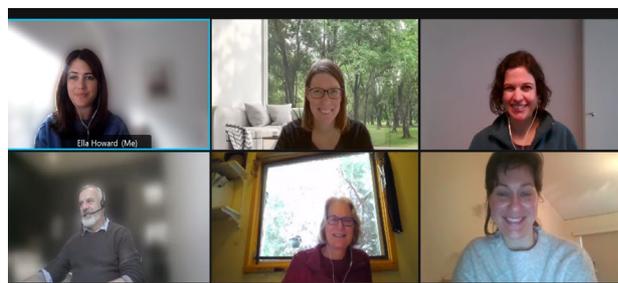
Working with our stakeholders

Uniform Law Policy Officer meetings

On 20 July, the Council's Senior Principal Policy Officer, Chelly Milliken, and Principal Policy Officer, Ella Howard, met via videoconference with policy officers of the Victorian Legal Service Board and Commissioner (VLSB+C) (Michelle Marfurt), Law Society of NSW (LSNSW) (Heather Moore and Anthony Lean), NSW Office of the Legal Services Commissioner (Sam Gulliver), the NSW Bar (Jennifer Pearce) and the Legal Practice Board of WA (Cath Carroll, Dale Wescombe and Catherine McKinnon).

Meeting attendees discussed the Council's ongoing work in relation to managed investment schemes, further amendments to Rule 42 of the Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 and work being undertaken in relation to the recommendations of the Royal

Commission into the Management of Police Informants. Each of the DLRA's provided an update on their current Uniform Law work.



L-R: Ella Howard, Chelly Milliken, Heather Moore
Anthony Lean, Samantha Gulliver, Michelle Marfurt

The group was sad to farewell Heather Moore, Senior Manager of Strategy and Projects at LSNSW, as she leaves the Law Society to move on to a new role. Heather's contribution to the Uniform Law scheme will be greatly missed. The Secretariat looks forward to continuing to work with Anthony Lean, Director of Legal Regulation at the LSNSW.

Royal Commission into the Management of Police Informants

On 30 July, the Victorian Department published a public consultation paper on a proposed mandatory reporting requirement for lawyers to report the suspected misconduct of other lawyers (as set out in Recommendation 86 of the Royal Commission into the Management of Police Informants). That consultation closed on 10 September. During August, Chelly Milliken and Ella Howard of the Secretariat were able to attend virtual roundtables held with the professional associations and regulators in Uniform Law jurisdictions to hear their preliminary thoughts on the consultation paper.

On 23 July and 17 September, Chelly Milliken and Ella Howard also attended meetings of the Legal Profession Regulation Working Group, convened by the Victorian Department, to discuss the Royal Commission's recommendations and current work that is being undertaken by the VLSB+C, Law Institute of Victoria, Victorian Bar and the Council.



Sir David Carruthers

On 26 August and 23 September, Chelly Milliken and Ella Howard attended meetings with the Implementation Monitor, Sir David Carruthers, and Murray Hawkins of the LCA to discuss progress of recommendations 78 and 85 made by the Royal Commission which relate to proposed amendments to the conduct and continuing professional development rules.

Meeting with the Commonwealth Attorney-General's Department

On 2 July, Megan Pitt, Chelly Milliken and Cora Groenewegen met with representatives from the Family Violence Policy and Programs Section, Family Safety Branch, of the Commonwealth Attorney-General's Department. The purpose of the meeting was to discuss options for enhancing the integration of family safety training into university learning and pre-admission training requirements. We discussed the process for making amendments to the Uniform Admission Rules.

International Conference of Legal Regulators (ICLR)

The ICLR was held virtually from 28 September–1 October. The ICLR aims to bring together legal regulators from around the globe to share knowledge and best practice, and to find solutions to common challenges. Fiona McLeay, Victorian Legal Services Commissioner, and John McKenzie AM, NSW Legal Services Commissioner, were both on the organising committee for this year's conference. Staff of the LSC Secretariat virtually attended the ICLR.



Fiona McLeay



John McKenzie AM

Australian speakers included Fiona McLeay in the sessions "Equality, Diversity and Inclusion – Are regulators part of the problem or part of the solution" and "The Role of the Regulator in Market Transparency and Comparison Services", as well as John McKenzie AM on "Interview with the Regulators: Who do we regulate and why?". Michelle Marfurt, Manager, Policy and Regulatory Strategy at the VLSB+C spoke at the session "Can We Still Do This? Exploring Lifelong Competency in Legal Practice" and Jennie Pakula, Manager, Innovation and Consumer Engagement at the VLSB+C spoke on "AI in the Access to Justice Toolkit".

Uniform Rule changes

Legal Profession Uniform General Amendment (Interest Rate) Rule 2021

On 30 July, the Legal Profession Uniform General Amendment (Interest Rate) Rule 2021 commenced. The Rule provides that, for the purposes of section 243 of the Uniform Law, the interest rate payable on fidelity fund claims is equivalent to the Reserve Bank of Australia cash rate plus 1%. This interest rate will only apply to claims made after the commencement of the Rule.

Uniform General Rules 91B and 91BA

The Legal Profession Uniform General Amendment (Managed Investment Schemes) Rule 2021, which amends rules 91B and 91BA of the Legal Profession Uniform General Rules 2015, commenced on 20 August 2021.

The amendment to rule 91B implements the recommendation of a 2020 report setting out findings and decisions of the Council's review of rules 91A – 91D of the Legal Profession Uniform General Rules 2015 relating to managed investment schemes. The report recommended an amendment to rule 91B to permit a law practice to provide legal services in relation to a managed investment scheme, in circumstances where an associate of the law practice has an interest in the scheme or the operator of the scheme, 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.

The Legal Profession Uniform General Amendment (Managed Investment Schemes) Rule 2021 also makes rule 91BA an ongoing rule. Rule 91BA was originally made by the Council on an urgent interim basis to resolve a serious and unintended consequence of the Commonwealth reforms to regulate litigation funding as managed investment schemes. Rule 91BA ensures that law practices in NSW and Victoria do not contravene s258 of the Legal Profession Uniform Law by promoting or operating a litigation funding scheme or providing legal services in relation to a litigation funding scheme or the responsible entity for the scheme.

Secretariat News

Transition to new records management system

The Secretariat has been working closely with the IT team at the NSW Department of Communities and Justice to commence work on transitioning to a new electronic document and records management system for our office. Ongoing meetings are being held to discuss our record management requirements and to finalise the project timetable. The project is expected to be completed this year.

For more information

Visit the LSC website: www.legalservicescouncil.org.au

Or contact us at lsc@legalservicescouncil.org.au