

## THE DANGERS OF EMAIL

The OLSC recently received a complaint concerning a practitioner who had forwarded an email she had received from an angry opposing party to her husband and sister seeking consolation about its aggressive tone. The sender was made aware that the practitioner had forwarded his email because one of the recipients sent back a response to "reply all." The client complained about the breach of his privacy. Apologies and detailed explanations were required and provided.

The complaint illustrates the trouble that being careless with email can cause.

Good email management is the key to preventing problems like this. According to Andrew Perry, Legal & Technology Director at legal.consult pty ltd, there are a number of ways practitioners can effectively manage their emails:

1. Create a "Current Matters" e-mail folder and an "Archived Matters" e-mail folder.
2. Within each of these folders, have folders with the client code and or name for each client, eg "LEG001 – legal.consult" and within those folders, have a folder for each active or archived matter respectively, eg "700134 – Sale of 1 Martin Place".
3. Put an "Our ref: " section in all e-mails, as you would with letters, and ensure the matter number is entered next to it in all outgoing e-mails. This helps you remember to record the time spent on that e-mail and means that if you forget to file the e-mail into the correct matter folder during the day, you (or your assistant) can search for all the e-mails containing that matter number and file them in bulk, at the end of the day or week. Because client replies often include your original message (and therefore the matter number), this also helps you or your assistant find and file messages left in your "aa\_" folders discussed below.
4. After you send an e-mail, file it straight into the relevant folder before moving onto the next task or at the very least, ensure that your assistant is regularly filing the e-mails in your Sent box using "Our ref: " to determine the appropriate matter folders to put them in.
5. Create e-mail folders such as "aa\_To\_Do", "aa\_To\_Follow-up", "aa\_To\_Sort" (using "aa\_" at the beginning of the folder names will keep them at the top).
6. If an e-mail comes in that:
  - a. you will attend to yourself, put it in your "aa\_To\_Do" folder;
  - b. you want to delegate to a member of your team, forward it to them and file it in your "aa\_To\_Follow-up" folder;
  - c. doesn't require a response but that you want to read later, file it in your "aa\_To\_Sort" folder.
7. Leave the office with an empty Inbox and Sent box, by ensuring everything is filed into the relevant folder above. When you have dealt with an e-mail, move it straight to the relevant Current or Archived Matter folder.
8. Have appropriate e-mail access and security in place, so that you have the flexibility of being able to access your e-mail from outside the office and/or on handheld devices, while still minimising the risk of it being unlawfully accessed.
9. Set times to review your Inbox and file e-mail into the above folders during the day, and avoid letting e-mail interrupt your focus on the matter at hand or your leisure time (through handheld devices).
10. Ensure that you have a reliable e-mail server with plenty of storage and take, and keep, regular off-site backups (having put all this time into organising your e-mail, the last thing you want to happen is to lose it all!). Some firms (including legal.consult) provide this service.

## WITHOUT PREJUDICE VIA EMAIL

As indicated in our last issue the OLSC can send out future issues of *Without Prejudice* via email. If you would like to receive *Without Prejudice* via email please contact us at [OLSC@agd.nsw.gov.au](mailto:OLSC@agd.nsw.gov.au)

Comments? Suggestions? Something you'd like to know more about? Write to us at [OLSC@agd.nsw.gov.au](mailto:OLSC@agd.nsw.gov.au)



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## CONFERENCE OF REGULATORY OFFICERS (CORO)

Since the mid 1990s regulators, professional associations, admitting authorities and trust account inspectors across Australia have met on an annual basis to discuss developments and exchange information on matters relating to the regulation of the legal profession. These annual meetings are formally known as the Conference of Regulatory Officers (CORO). Last year's conference, which the Commissioner and the two Assistant Commissioners attended, took place in Brisbane in October 2007.

The conference which was held over two days included a range of diverse speakers such as The Hon. Justice Margaret McMurdo AC of the Queensland Court of Appeal; Dr Christine Parker, Associate Professor and Reader, University of Melbourne Law School; Professor Jeff Giddings, Deputy Dean (Learning & Teaching) and Program Convenor for the Graduate Certificate in Dispute Resolution at Griffith University; Hedley Thomas, Senior Writer, *The Australian* and Randal Dennings, Partner, Clayton Utz.

During the past twelve months there has been much discussion between a number of regulatory bodies in an attempt to ensure harmonisation of processes and procedures within all jurisdictions in Australia. The purpose of this year's conference was to enhance such harmonisation.

The conference featured several plenary sessions focusing on issues such as developments in relation to incorporated legal practices (ILPs) and a discussion exploring the concept of unsatisfactory professional conduct.

There has been a great deal of development in the area of incorporated legal practices and the new ILP Portal

Project which has been addressed in previous issues of *Without Prejudice*. We have been working with the Queensland and Victorian regulators to arrive at common business rules on how ILPs are regulated throughout Australia. The Commissioner presented a paper at the conference on this issue which is available on our website at <http://www.lawlink.nsw.gov.au/olsc>.

The plenary session exploring the concept of unsatisfactory professional conduct used the interesting format of a hypothetical run by Damien Carrick, presenter of The Law Report on Radio National, with a distinguished panel of commentators.

Once again this year's conference ended on a successful note with participants reaching agreement about a number of key issues and the approaches that should be adopted to achieve harmonisation of regulatory approaches. The positions reached included:

1. Acceptance of the draft National Guidelines on Continuing Professional Development. The draft Guidelines will be circulated to all jurisdictions with a view to adoption.
2. Confirmation that the approach we have taken in NSW in regulating incorporated legal practices will be utilised in all jurisdictions where incorporation is allowed. This will allow national firms which incorporate to face only one regulatory regime.
3. Support for a National Disciplinary Register. The Commissioner agreed that the OLSC will link our web-based register in NSW to the other disciplinary registers that exist in other jurisdictions.
4. Support for a National Register of Practitioners. This register will enable authorities to determine where practitioners are practising, or eligible to practise.
5. Sharing research projects, proposals and findings. In this regard, the Commissioner announced that the OLSC is conducting a research project in conjunction with Australian Lawyers' Alliance on the impact of lawyers advertising;
6. Commendation of the national protocols dealing with issues such as the exchange of information, trust account investigations, and fidelity fund arrangements that were adopted at last year's CORO in Adelaide.

## THE LEGAL SERVICES ACT 2007 (UNITED KINGDOM) – SWEEPING NEW REFORMS

In July 2003 the UK Government commissioned Sir David Clementi to report on and review the regulatory framework for legal services in England and Wales in response to a 2001 report by The Office of Fair Trading (OFT) which called for the removal of anti-competitive and overly restrictive rules in the professions and in particular, the legal services market.

In March 2004, Sir David Clementi's initial Government report on the regulatory framework for legal services found the legal market to be outdated, inflexible, over-complex and insufficiently accountable or transparent. Clementi proposed that an independent oversight regulator be established to simplify regulation and ensure clarity for consumers. Clementi also promoted increased innovation and competition. Clementi's recommendations were encapsulated in the Legal Services Bill (UK).

On 30 October 2007 the Bill passed into law as the *Legal Services Act 2007*. The intention of the legislation is to increase competitiveness and choice and improve the quality of legal services.

### Key features of the Act

- The Act establishes a single supervisory body, the Legal Services Board (LSB), to oversee the approved regulators such as the Law Society and the Bar Council.
- The Act creates a single point of entry for consumer complaints about legal services - the Office for Legal Complaints.
- The Act permits alternative business structures (ABSs), allowing lawyers to form partnerships with non-lawyers, and accept outside investment or operate under external ownership.

- The Act requires professional bodies to separate their regulatory and representative functions.
- The Act creates statutory objectives and duties for all regulatory bodies.

### The Legal Services Board (LSB)

The Act sets up a Legal Services Board (LSB) to oversee the regulation of legal services in England and Wales. The Board will replace the current maze of regulators with overlapping powers. The Board's statutory powers and duties will include authorising bodies to be approved regulators of legal services, authorising bodies to license alternative business structures, approving professional rules, and directing changes to them if this proves necessary and justifiable, and commissioning, monitoring and investigating research into the legal services market. The chair of the Board will be a lay person.

### Alternative Business Structures (ABSs)

The Act permits new kinds of legal practices in which lawyers are able to join with other kinds of lawyers and non-lawyers to form legal disciplinary practices (LDPs). In an LDP up to 25 per cent of partners or equivalent managers are permitted to be non-lawyers, without any external ownership.

In the longer term, the Act also allows lawyers to form multidisciplinary practices with other kinds of professionals, for example, accountants. It will also allow non-lawyers to own firms that provide legal services whether by flotation of law firms on the Stock Exchange or by the setting-up or acquisition of law firms by commercial companies.

### Office for Legal Complaints

The Act also creates a new independent ombudsman service, the Office for Legal Complaints (OLC), to deal with consumer complaints arising from legal services provided by all lawyers. The OLC will act as a single gateway for all complaints against all legal services providers, and will investigate and process them. Importantly, disciplinary matters remain the responsibility of individual approved regulators. The OLC will deal only with redress—not with regulation.

### Timeline for implementation

The LSB is not expected to be fully established before 2010, with the OLC following shortly afterwards. The new ABS regime is unlikely to be available for adoption until 2011 or 2012, since this requires the LSB to be in place. Legal disciplinary practices are likely to be a possible option for solicitors and other lawyers from 2009.

## New structures for legal practices

The opportunity to restructure a legal practice is of course not a new phenomenon for the legal profession in Australia. Since 1 July 2001, for example NSW legal service providers have been permitted to incorporate and provide legal services to clients either alone, or alongside other service providers who may, or may not be, "legal practitioners". Similar legislation has been enacted or is just about to be enacted in all Australian States and Territories.

The decision to enact similar legislation in the UK was based on the potential benefits that alternative business structures could provide for both consumers and legal service providers. According to the UK Government the potential benefits for consumers include greater choice, reduced prices for legal services, better access to justice, improved consumer services, greater convenience and increased consumer confidence. The potential benefits for legal service providers on the other hand include increased access to finance, better spread of risk, increased flexibility, easier to hire and retain high-quality non-legal staff and more choice for new legal professionals.<sup>1</sup>

Do you agree? The OLSC is interested to hear your views about restructuring legal practices. Has your firm incorporated? Why? Why not? Is your firm interested in listing? Why? Why not?

<sup>1</sup> See Department for Constitutional Affairs, United Kingdom, *The Future of Legal Services: Putting Consumers First*, 2005 available at [www.dca.gov.uk/legalsys/folwp.pdf](http://www.dca.gov.uk/legalsys/folwp.pdf)

## WE HAVE MOVED!

In the June 2007 edition of *Without Prejudice* (No. 36) we reported that the Attorney General's Department would be relocating offices to Parramatta towards the end of the year and that we would remain in the CBD but relocate to Castlereagh Street.

The OLSC has now moved office from the Goodsell Building to Level 9, 73-75 Castlereagh Street Sydney. Our contact details remain unchanged.

Please note that the following business centres of the Attorney-General's Department have moved to the Parramatta Justice Precinct, 160 Marsden Street, Parramatta:

- Corporate Services Division
- Finance & Strategy Branch
- Human Resources Branch
- Information Services Branch
- Asset Management Services
- Records
- Office of the Protective Commissioner
- Office of the Public Guardian
- Crime Prevention & Community Programs
- Community Relations Unit
- Community Justice Centres
- NSW Audit
- Diversity Services
- Victims Services
- Privacy NSW
- Reporting Services Branch
- NSW Parole Board
- Legal Aid NSW (some departments)
- Professional Standards Council
- Aboriginal Justice Advisory Council
- NSW Registry of Births, Deaths & Marriages

Contact details for the above business centres can be found on the Department's website at [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au) or by phoning 8688 7777.