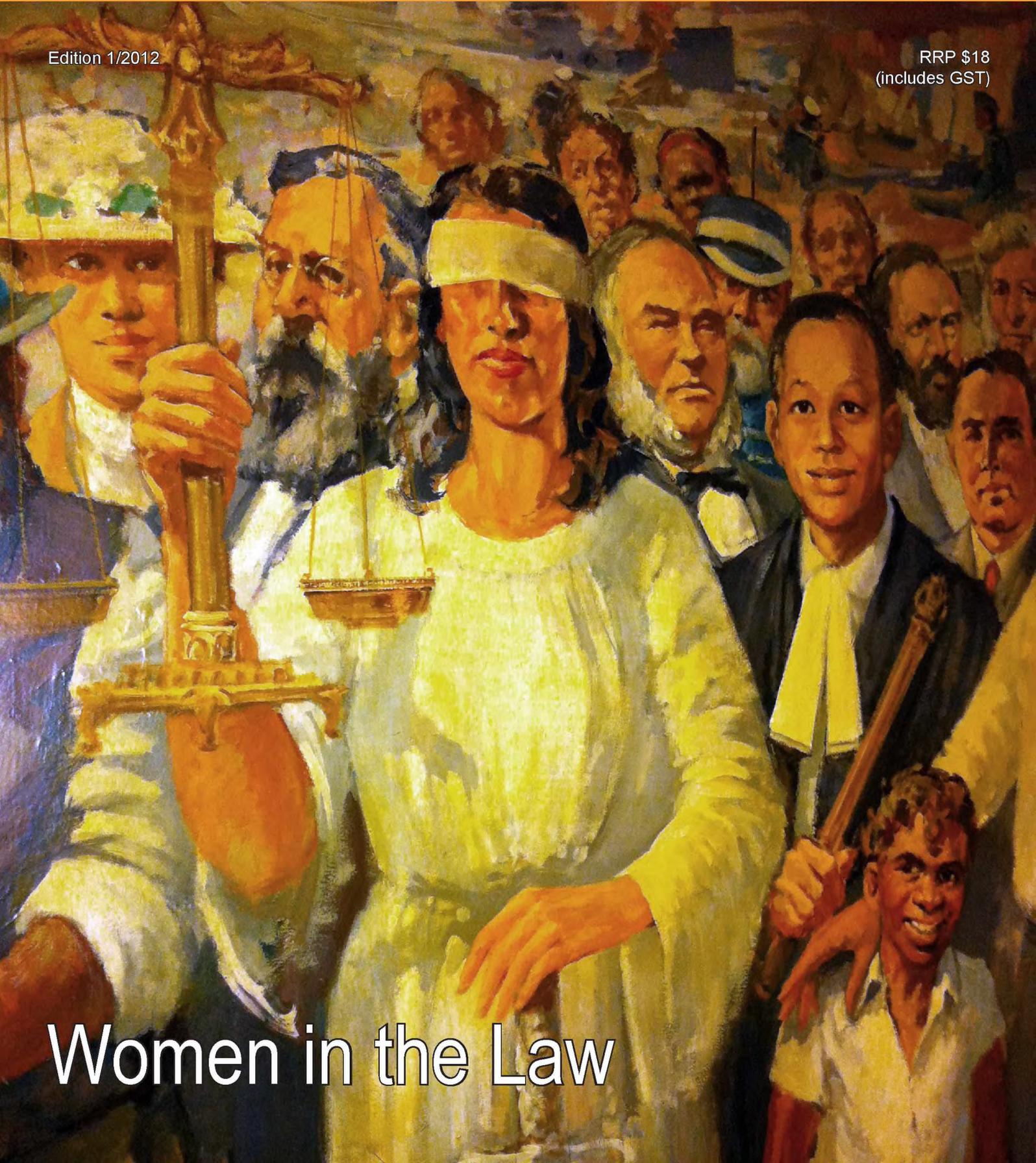


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Women in the Law

Rules, Regulations and Honours

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“Time flies”, this phrase becomes truer as we grow older. It is almost May 2012 as I compile this report. It is some three weeks until my daughter turns fourteen, another Law Week is around the corner and it is only seven months to Christmas. Being president has continued to be an interesting journey. The national issues with respect to regulation of the legal profession and the national solicitor’s conduct rules for the Northern Territory continue to bubble along.

Australian Solicitor Conduct Rules

At the Society’s Council meeting in March 2012, there were some discussions with respect to the Northern Territory adopting the national Australian Solicitor Conduct Rules (“ASCR”). The general consensus of the Councillors during the debate was against the adoption of the ASCR by the Northern Territory for its local legal profession. As you may all know, the Law Society Northern Territory already have conduct

rules in place for its solicitors / legal practitioners.

The proposed national ASCR is different to the existing rules but there are also similarities. The main concerns that have been expressed to Council to date appear to be the change in the rules dealing with conflict, payment of barristers fees as well as categorising any harassment or bullying behaviour as misconduct. These were not the only concerns but they probably raised the most debate within the profession.

In relation to the issue of conflict, at the present time if a conflict arises in the course of a practitioner in a legal firm acting for a client, the practice would be for that firm to cease acting for that client and refer the client to another firm of solicitor for advice. There is usually no question that the client will remain in that legal firm but having another different practitioner within the same firm to take over the conduct for that client.

The proposed ASCR that deals with this issue is seen to ‘soften’ the requirements in terms of conflict

for clients. The proposed ASCR offers an alternative that the client may choose to transfer the matter to another practitioner within the same legal firm, provided that the client has been fully informed, provided with independent advice and consents to such a transfer within the same firm and safeguards are put in place to avoid any further conflict of interest between the practitioners in the firm. Such an alternative would then allow the firm to retain the client’s instructions notwithstanding the conflict that has arisen and this may give rise to concerns with respect to “Chinese walls” and how the conflict issue could be effectively overcome.

Another submission in relation to the above proposed ASCR with respect to conflict is that the rule only favours large law firms as smaller legal firms would not have the number of practitioners within the same firm to be able to effectively use this alternative to retain the client. I believe this to be a valid argument, however, on the other hand, clients who are faced with having to change lawyers due to conflict may appreciate the option of being able to remain with the same firm but using a different practitioner. It is arguable that such an alternative may be less costly and time consuming to the client and would be invaluable if the client’s matter was close to or in the course of a hearing.

Further, apart from the conflict that has arisen, the client may be quite satisfied with the service from the legal firm and have no other reason to want to change



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solicitors generally. I do however, appreciate that the protection of clients and legal practitioners in situations where conflict has arisen unexpectedly is a difficult issue and will continue to be the subject of ongoing debate in the legal profession.

The proposed ASCR also includes a rule that is not in our current Northern Territory conduct rules. The proposed ASCR seeks to characterise any bullying or harassment conduct by a legal practitioner to amount to professional misconduct under the Rules. I understand that one of the objections to such a Rule is that there is already other legislation, Tribunal or Commission, that deals with bullying and / or harassing behaviour and as such to render such behaviour within the legal profession to be misconduct is an additional penalty to a practitioner that otherwise would not be founded.

Any practitioner who engages in such behaviour may not be seen as a fit and proper person to practise as a solicitor, however, at present there are no rules which would render such behaviour professional misconduct such that the Law Society would take action against that solicitor's practice. In the circumstances, some part of our local legal profession may consider the addition of such a rule to potentially be a double penalty and add to more stringent and possibly over regulation of the legal profession.

On a personal note, I do not have

any objection to this proposed ASCR but I also appreciate other's concerns that the Northern Territory profession has not had this rule previously and there may not be a need for same locally.

I believe that the proposed ASCR that perhaps has caused the most debate within the legal profession in the Northern Territory is the absence from the proposed ASCR of the current existing local conduct rule which requires solicitors to be responsible for payment of barristers' fees. The Northern Territory's existing conduct rules provide that a solicitor who briefs a barrister / counsel is liable for payment of counsel's fees. In the event that the solicitor fails to pay counsel, counsel may refer his / her unpaid fees to the Law Society Northern Territory for consideration.

Upon such a referral, the Society would consider counsel's fees / unpaid account and, as appropriate, require the solicitor to attend to payment of counsel's fees. In the event that the solicitor

does not heed the Society's advice and direction to pay counsel, then such failure to pay could amount to professional misconduct for which disciplinary action may be taken against the solicitor. The proposed ASCR do not contain such a rule or procedure. The proposed ASCR does provide that a solicitor, when dealing with third parties (presumably including barristers/ counsels) must advise the third party as to who is responsible for his or her fees / costs for their services. In the absence of such advice, one would presume that the solicitor would then be responsible for the third party's costs. However, there is no rule in the proposed ASCR which would allow any reference by counsel to the Society, nor any intervention by the Society to direct or facilitate payment by solicitor to counsel.

The Law Society has sought submissions or comments from the Northern Territory Bar Association in relation to the proposed ASCR. In relation to the rule pertaining to payment of counsels' fees, NTBA has suggested that local practice directions may be implemented to ensure that the process and procedure available to counsels under the current existing rule with respect to payment of their fees by their instructing solicitors would continue in the Northern Territory so that they are not disadvantaged by the absence of a similar provision in the proposed ASCR.

I understand that in other jurisdictions such as Queensland



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and South Australia, who have adopted the national ASCR, they have also implemented local practice rules or directions to deal with local issues that may not have been addressed in the national rules. It is hard to see how much the ASCR can then truly be said to be a national set of solicitors' rules, when local practice directions or rules may modify or change the effect of the national regime. Nevertheless, national conduct rules are likely to continue to be an ongoing issue for the legal profession in the Northern Territory, just as the National Legal Practitioner Reforms are still being considered by the other States and Territories.

In relation to Council's consideration of the proposed ASCR, such consideration has been adjourned to our May meeting for further debate; however, from discussions to date, it is unlikely that the Northern Territory will be looking to implement the ASCR at a local level at this stage. However, we will need to continue to monitor any developments in this area as the ongoing push at the federal level for a national regulation of the legal profession progresses.

National Legal Profession Reform

In terms of the National Legal Profession Reforms, the status remains that Victoria will be the first State to implement the legislation, while the Legal Commission and Board will be situated in New South Wales. It has also been in the news that Queensland appears to be wavering in its support of the NLPR. With the introduction of a new Government and a new Attorney-General in Queensland, that state's overall attitude to NLPR is unclear; however, I understand that discussions are continuing between the States. There are still reasonable prospects that Queensland will adopt the NLPR. South Australia has recently passed state legislation dealing



the Council's preliminary view is that if the costs are going to be inhibitive and / or they will have to be borne by the local profession, then there will be further argument against the implementation of such a national scheme.



with legal profession reform locally, however, depending on how the NLPR progresses in the States that have adopted the national legislation, South Australian may review its position on a national system at a later time.

On a local Territory level, I have met with the Northern Territory Attorney-General and raised the issue of NLPR with him. One of the Society's main concerns is the costs of implementation of the NLPR program and the systems required for same. Practitioners will no doubt be concerned about any costs of any such implementation being passed onto them or their practice, and as such, the Council's preliminary view is that if the costs are going to be inhibitive and / or they will have to be borne by the local profession, then there will be further argument against the implementation of such a national scheme. In this regard, the Law Society continues to monitor the progress of the NLPR in Victoria, New South Wales and Queensland, as well as any further information or discussions that may occur at the federal level and through the Law Council of Australia. Change is difficult and I do not like change; however, at the same time change is inevitable, therefore ongoing participation in the debate and monitoring of the process will be important.

Further, I have noted the comment that the Northern Territory should not, and may not, adopt any changes resulting from the NLPR,

especially if proposed changes towards national regulation reforms do not appear to have any obvious benefit to the local profession at a personal or individual level. However, there may be benefits that may be apparent in the long term such as the possibility of additional resources, better management systems shared knowledge and a consistent approach to regulation in all States and Territories. We will therefore continue to "watch this space!"

Order of Australia Association

On a more leisurely note, I was most grateful to be invited to an Order of Australia Black Tie Gala Dinner at the Convention Centre on black Friday 13 April 2012. It was a most interesting and enjoyable evening and I certainly learned a lot from that one dinner. I have to admit that before receiving the invitation, I was not aware of an Order of Australia Association, nor, what that Association does. My only knowledge of "Order of Australia" were the awards that were awarded to deserving Australians on the Queen's birthday and then these people could add little letters after their names. I always thought it was a very fine tradition, but now I know more, so let me share this with you.

The Order of Australia Association Foundation supports the next generation of leaders by helping promising young Australians from

all walks of life to achieve their potential for the benefit of future Australians. This Foundation was formed in April 1999 as a separate entity from the Order of Australia Association so that the Foundation could offer donors tax deductibility for their donations. Each year the Foundation sponsors Scholarships for students with leadership potential who are in their early years of tertiary study. By sponsoring the Scholarships, the Foundation provides a national focus for the aim of The Order of Australia Association, namely to promote the "Love of and pride in Australian Citizenship".

At the dinner, three scholarships were awarded, one to a mother of two, Karynne Lke from Farrar in the Northern Territory. Karynne is presently enrolled in the Bachelor of Social Work at Charles Darwin University. Within the broad Social Work field, she aspires to work in Child Protection with special emphasis on the placement of foster children and adopted

children. In her community and through her children, Karynne contributes extensively to many activities, such as choir, horse riding, swimming and wildlife protection. The other recipients were Alexandra Grigg, an Economics and Finance student from the University of Adelaide, and James Broinowski, a student in the Degree of Viticulture and Oenology from the University of Tasmania. The Scholarships have two significant features. Awardees receive a scholarship of \$40,000 which is tailored to the awardee's individual needs to include tuition fees, living allowance, text books and equipment; as well as an introduction to an eminent volunteer mentor who has received an appointment or an award in The Order of Australia who has background experience close to the chosen field of study of the awardee.

I also discovered from the dinner that the Australian Honours system began in 1975 with the creation of

the Order of Australia to recognise service to the nation or humanity, as well as Australian Bravery Decorations and the National Medal. Australian honours are unique in that they were designed for the community to make nominations. The Australian honours system is free of patronage or political influence. Anyone can nominate an Australian citizen for an honour. The Order of Australia has four levels which are described in the box below.

The dinner was extremely well attended and there were a large number of medals on display. It does tend to inspire one to strive for bigger and better things, but alas, at the end of the dinner and just like 'Cinderella' when she returned home from the ball, one is brought back to earth and feels firmly entrenched in one's own world with no real desire to step out of the square... lucky there is always tomorrow.... ●

The Order of Australia

Companion of the Order of Australia (AC)

This is awarded for 'eminent achievement and merit of the highest degree in service to Australia or humanity at large; in the military division, the Companion is awarded for 'eminent service in duties of great responsibility'.

Officer of the Order of Australia (AO)

This is awarded for 'distinguished service of a high degree to Australia or humanity at large'; in the military division, the grade of Officer is awarded for 'distinguished service in responsible positions'.

Member of the Order of Australia (AM)

This is awarded for 'service in a particular locality or field of activity or to a particular group'; in the military division, the grade of Member is awarded for 'exceptional service or performance of duty'.

Medal of the Order of Australia (OAM)

This is awarded for 'service worthy of particular recognition'; in the military division the Medal is awarded for 'meritorious service or performance of duty'. In all grades, the General Division award takes precedence over the Military Division.