

BALANCE

LAW SOCIETY NORTHERN TERRITORY

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Another Christmas, another new year, another attempt at NLPR....



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I understand that National Legal Profession Reform has been on the federal and state and territory agenda for some time now. I first became aware of NLPR when I was involved in the executive of the Law Society Northern Territory Council a few years ago. It always seemed to me to be a rather amorphous floating idea that is out there and unlikely to really touch or affect practitioners in the Territory, as we are so far away from the rest of Australia and we have the smallest legal profession in the country.

However, having been a mushroom in relation to NLPR for an extended period, probably because my head was in the sand and I wanted to be a NLPR mushroom, I have come to the view that the NLPR issues will not go away and will continue to be something which all lawyers, in jurisdictions great or small, will have to deal with and respond to. NLPR is likely to be something, much like an amorphous white cloud that will touch all practitioners at one stage or another, even in States and Territories that have indicated they will not support or adopt the reforms.

In the circumstances, I have tried to better inform myself in relation to NLPR and hope to set out below my thoughts and a brief summary of my understanding of the current status of NLPR for the purpose of the Northern Territory Legal Profession, as well as discussions

that I have had with the NT Attorney-General's Department and the interstate representatives of the Large Law Firm Group (LLF).

Where are we now?

It is time for the legal profession in the Northern Territory to consider and if possible, arrive at a position that can be communicated to interested parties with respect to our view as to the NLPR for the Territory. Interested parties include the Northern Territory Attorney-General's Department, the Law Council of Australia, the Large Law Firm Group, Law Societies of other States and Territories, and the Federal Attorney-General's Department.

In particular, I note that the Northern Territory Attorney-General's Department has indicated that it would be useful to have a firm view from the Law Society on behalf of the local legal profession in relation to NLPR, so that our Attorney-General can articulate a position if required to do so at a federal level. Strategically, it would also be preferable for the Society to present a considered and coherent position (irrespective of what that may be ultimately).

As you may all know, in one form or another, the NLPR continues to have a difficult time in becoming a truly national reform for the Australian Legal Profession. The current status remains that the

NLPR legislation will be passed and effected in Victoria first, with the Legal Commission being situated in NSW. The split of the implementation requirements is thought to ensure that both the two largest jurisdictions will remain under the NLPR "umbrella". I am informed that legal practitioners in NSW and Victoria make up some 80% of all practitioners in Australia.

At present, although ACT has indicated that their A-G and Law Society support the NLPR, there has been no move to implement legislation to give effect to the reforms. Tasmania remains firmly opposed to the NLPR; and SA and WA have indicated that they will not participate in same. The Queensland Law Society supports the NLPR, however; the Queensland Attorney-General has indicated that he is not supportive of the reforms as they do not 'benefit' the practitioners in his jurisdiction.

In relation to the Northern Territory, historically the Society has publicly (and to various A-Gs) expressed the view that the Society generally supports a national profession but wants to ensure that local presence (LSNT) is preserved and also:

- Fidelity Fund is preserved
- PII conditions remain positive
- Local complaints handling continue

- Interest on trust accounts remain in the Northern Territory

I have personally had general discussions about NLPR with three Northern Territory Attorney-Generals. Our current Attorney, The Hon John Elferink MLA, has indicated that he will be guided by the Society in relation to NLPR as it is regulation of the legal profession and the Society would be more across such issues, and therefore should be able to advise him in relation to same. Therefore, at this point in time, it is fair to say that the Northern Territory is largely non-committal in relation to the adoption of and implementation of NLPR.

Pros and Cons of NLPR for NT...

There are no doubt relevant concerns of how the NLPR will affect practitioners in a small jurisdiction such as the Northern Territory. Matters such as the costs of the reforms, and schemes required for the implementation of same will not be insignificant, and will remain an issue for local practitioners. I have previously advised the NT Attorney-General

of the Council and Councillors' concerns in relation to NLPR, summarised as follows:

- little or no perceivable or obvious benefit to the local Northern Territory legal profession;
- the NLPR is seen as reform that only advantages large law firms and is driven by the Large Law Firm Group;
- the reforms are not suitable and in some circumstances not applicable to legal practice in the Northern Territory;
- cost of implementation of such reforms will ultimately be borne by the local profession;
- loss of local control and responsibility for our local profession, acknowledging that the practice of law in the Northern Territory is unique;
- uncertainty with the reforms; little benefit compared to likely and significant adverse effects.

The above concerns cannot be said to reflect the entire or overall position of the Law Society, and many concerns may be assuaged with further information.

For example, there is as much evidence to suggest that the reforms can lead to cheaper legal practice and administration of the profession, as well as additional expenses in some areas; there can be little argument that there may be savings based on economy of scale of national reforms and systems because of the small number of practitioners in the Northern Territory; and further, the perceived benefits and perceived detriments from NLPR may be equally uncertain

On the other hand, it cannot be denied that there are some advantages to a system of NLPR. There may well be costs savings in terms of economy of scale in national over local administration of the legal profession. There may be additional support for the local Law Society, and our functions may be refined to become more appropriate and more focused to meet the needs of the local profession. We may be better able to concentrate on assisting local practitioners, providing additional support, services and education if demand on our resources becomes less and we can re-allocate those resources to other areas. However, being a very small legal profession in the Northern Territory, it is a real concern that Territory practitioners will lose their 'identity', and their needs will not be met if NLPR is managed interstate. Should this occur, then the Northern Territory would be one of the very small jurisdictions and may have little power or say in the function and operation of the national reforms.

More recently, at the last conference for Law Council of Australia, I also had the opportunity of discussing NLPR issues with the LLF representatives. They indicated that they were still very keen to 'persuade' the Northern Territory and other jurisdictions to reconsider their positions in relation to adopting and ultimately implementing reforms. In this regard, the LLF representatives indicated that in relation to the NT

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and our concerns, and uncertainty about the NLPR and its application to the NT:

- They confirmed that the Northern Territory Fidelity Fund will be preserved under the reforms;
- The reforms will not affect the Territory Law Society and profession's options with respect to our professional indemnity insurance cover; and policy conditions can be negotiated to ensure that they remain positive and in favour of the local profession;
- Local complaints handling will continue to be handled by the Law Society, and that there will not be any attempt to 'centralise' the consideration and determination of local complaints in another state;
- The reforms will not affect the ongoing accrual of interest on trust accounts to the Northern Territory Fidelity Funds. Previously there were indications that if law firms trust accounts are centre in one jurisdiction, then interest on trust funds held by Northern Territory law firms or practitioners would be directed to that State or Territory's legal commission / entity, as the banks or financial institutions may not have the capacity to divide and separately attribute interest on trust accounts to different State or Territory law societies or legal commissions. I understand that this is no longer an issue and the banks and financial institutions have indicated that separate

allocation of interest from trust accounts can occur from one central trust account to different law societies or legal commissions in other States or

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Territories;

- The costs of adopting and implementing NLPR for the Northern Territory should be minimal with the Law Society maintaining most of its current functions, or it may be possible for some level of financial assistance if required. Further, it is envisaged that there may also be some savings to the Law Society on the basis that the administrative tasks such as the payment for and application for practising certificates and the like may be processed through a larger jurisdiction such as NSW with little or no costs to the local profession.

In light of recent discussions with various parties, I believe that there are several options open to the Northern Territory legal profession and to Law Society Council in

relation to the matter of NLPR:

1. Wait, watch and see approach

No prize for guessing what this involves, namely wait, watch and see what happens in Victoria and New South Wales; without taking any affirmative action or any other steps towards agreeing to, adopting or implementing the NLPR in the Northern Territory. We can reserve our position and delay any particular decision on NLPR and monitor its progress through the participating States and see the effects or outcomes from there before reconsidering our views.

2. Consider enacting an adapted version of the NLPR to apply locally

Consider whether or not an adapted version of the NLPR can be applied to the Northern Territory for the benefit of the Territory profession. The difficulty with this option is that it would not truly be a National legal professional reform, since it would have been adapted to suit a particular jurisdiction. Further, the time and resources required to consider and provide an adapted version of the proposed NLPR to the Northern Territory is probably not justified given that we already have legislation dealing with the local profession.



3. Partial adoption

Consider whether it would be advantageous to adopt parts of the NLPR reforms, namely the parts that would assist or benefit the Northern Territory legal profession and not adopting parts or sections which do not apply or that we do not wish to apply to the Territory. Once again such an approach is likely to have the effect of defeating the purpose of NLPR generally. Piecemeal and partial adoption of legislation and legislative reforms are likely to lead to more application and interpretation problems in the future.

4. In principal support and restructured model

The Northern Territory, the Law Society and the legal profession commit to national legal reform in principle and then lobby the "big boys" to come up with something that can be applied locally. This may involve engaging in a restructure of the legislation that allows easy adoption locally of the regulation sections and leaves the mechanics (commissioners and national boards) to one side. This would focus on the regulation sections and give the Northern Territory, at the very least, consistent numbering nationally on those items.

For example, currently the Trust Account legislation is almost identical in many jurisdictions— but the section numbers differ around the country. It would be a great leap forward if all Trust Account Supervisors were talking about s234 notices – easier for law firms (not just multi-jurisdictional firms) easier for auditors (many are national accounting practices) and easier for regulators. Imagine one

National CPD module that could be rolled out across the country!

5. Rejection

We can also simply confirm that Northern Territory is not prepared to be a part of NLPR; a similar position to that taken by Tasmania, and take no further part in that process. The disadvantage of this approach would be that if we do not take part or monitor the NLPR progress in the other States that are adopting the reforms, then we may not be able to access valuable information as to the progress of the reforms and use any such information, processes and ideas that may be beneficial to the Northern Territory profession.

Summary

NLPR remains a difficult issue, both nationally and locally in the Northern Territory. Victoria and New South Wales contains about 80% of the national legal

the reforms. The Federal A-G does not appear to be pressed one way or the other, however, she no doubt wants the entire nation to adopt and accept NLPR as it is probably something she had advocated previously. The concern is that if any jurisdictions that do not get on board with NLPR may miss out or may have the system or reforms imposed on them by legislation. In addition, if subsequently, more States or Territories become involved in NLPR, then there is likely to be more political pressure on the Northern Territory to be a part of the reforms. At this stage I do not believe that NLPR will be imposed on the Northern Territory legal profession but this is something that is possible and within legislative power, whether or not the profession agrees to it.

In the circumstances, my personal view is that, at this stage, I would like to move along the path of option 1 above and keep our ultimate decision on whether NLPR is for the Northern Territory or not open for a little while longer. It is envisaged that Victoria will implement their legislation for NLPR in 2013 and I will be interested to see how that progresses with the Commission in NSW and the practicalities of how the reforms actually work or not in the coming 12 months to two years. It will also be interesting to see that actual legislation that will be passed in Victoria as the drafting of same has been visited and revisited countless number of times and no doubt there has been further refining, defining and amendments to the legislation since the last umpteenth draft!

I wish you all a very happy, safe and enjoyable Christmas and New Year. Rest assured that NLPR will 'prosper' and persevere through 2013... *Ho Ho Ho!* ●

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profession and perhaps the pro NLPR people will be content if those two states take up NLPR even though the rest of Australia remains apart and separate from