

The President & Commissioners  
Australian Law Reform Commission  
PO Box 12953  
George Street QLD 4003

By email to: [familylaw@alrc.gov.au](mailto:familylaw@alrc.gov.au)

Dear President,

**RE: REVIEW OF THE FAMILY LAW SYSTEM - ALRC Discussion Paper 86, 2018**

We would be grateful if you would consider this submission on behalf of the Legal Profession Board of Tasmania.

The submission applies discretely to proposals 12.1, and 12.2 at page 292 and 294 of the Discussion Paper.

The Legal Profession Board ("LPBT") is a statutory body formed under the provisions of the *Legal Profession Act 2007 (Tasmania)*. It is invested with the following statutory functions relevant to this submission –

- to monitor the standard and provision of legal professional services;
- to receive, investigate and determine complaints made under Chapter 4 and, as necessary, refer complaints to the Tribunal or Supreme Court for hearing and determination;
- to approve terms and conditions of professional indemnity insurance policies provided to law practices;
- to advise the profession on appropriate standards of conduct;
- to monitor and identify trends and issues that emerge within the legal profession;
- to approve courses of continuing legal education;
- to advise the Minister on any matters relating to the Act;
- such other functions as may be imposed by the Act or any other Act;
- to conduct education programs relating to client-lawyer relationships for members of the public.<sup>1</sup>

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<sup>1</sup> Legal Profession Act 2007 (Tas) s591

Various, and dependent upon whether any complaint is substantiated or dismissed after due process, the LPBT has a raft of powers including –

- admonishing or reprimanding practitioners;
- dismissal of complaints which are vexatious, misconceived, frivolous or lacking in substance;
- imposition of a fine;
- referring the complaint to the Legal Profession Tribunal with a recommendation for compensation or to the Supreme Court in serious cases of professional misconduct;
- determining that fees charged must be waived in whole or in part;
- determining that fees charged should be repaid;
- requiring certain work to be undertaken or completed free of charge;
- requiring the waiver of any lien imposed by a practitioner;
- requiring a practitioner to undertake a specified course of legal education or counselling;
- requiring supervision or inspection of a practitioner;
- requiring a practitioner to obtain specified advice;
- requiring a practitioner to cease accepting instructions in relation to a specified area of legal practice;
- requiring a costs assessment;
- requiring reparation;
- powers of enforcement;
- requiring the giving of an apology<sup>2</sup>.

The Board deals with complaints related to practice in the Family Law Jurisdiction on a frequent basis.

In the 2017/2018 reporting year complaints received and dealt with relating to that area of legal practice comprised 21% of the total complaints received by the Board<sup>3</sup>.

The proposal to establish a further body to deal with complaints against practitioners in this jurisdiction is of concern to the LPBT.

We note that the proposal suggests that -

*“The complaints-handling function should be in addition to, rather than instead of, any existing complaints mechanisms administered by the organisations and professional bodies to which the relevant professionals already belong”<sup>4</sup>*

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<sup>2</sup> Ibid s 433, 454, 456, and 486

<sup>3</sup> LPBT Annual Report 2017-2018 (see [www.lpbt.com.au](http://www.lpbt.com.au))

<sup>4</sup> Australian Law Reform Commission, Review of the Family Law System, Discussion Paper No 86 (2018), para 12.29 at page 296

It is respectfully submitted that the Commission should approach the establishment of an additional complaints body with extreme caution.

The LPBT is subject to a statutory requirement to deal with complaints received. The process is mandatory for the Board and it cannot pick and choose jurisdictions or types of matters it will deal with. An additional complaints body for Family Law Practitioners would almost certainly result in duplicitous proceedings and, quite possibly, conflicting outcomes. That will not be unique to the Tasmanian legal profession. Disciplinary bodies throughout Australia have very similar provisions. The conflict and duplicity caused by an “additional” complaints body would occur nationally.

The Commission may wish to consider the need to confer with State and Territory bodies for the purposes of amending their relevant statutory framework to avoid conflict and duplicity if the proposal goes any further.

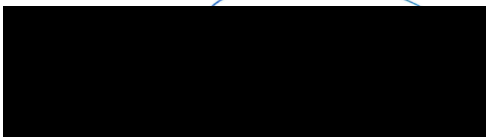
Further, it is submitted that the establishment of additional complaints process will be approached by some complainants as being very much an “additional” option, not an “alternative” option. Litigants in this jurisdiction are typically stressed and often traumatised by the process and outcomes. The unavoidable and natural emotional investment which accompanies applications in this jurisdiction for litigants leaves practitioners uniquely exposed to multiple complaint processes. The LPBT is concerned that adding another layer of complexity and potential sanction to practitioners in this jurisdiction will discourage both solicitors and barristers, particularly more junior lawyers, from accepting instructions or briefs in these matters.

Moreover, the Board considers it would be unfair to the profession to be left open to duplicitous complaint procedures with potentially different outcomes. Dealing with the complaint process for practitioners requires time and usually causes stress and worry. Dealing with two possibly contemporaneous procedures would add an unnecessary and unwarranted complexity to the practice of law in our view.

We would urge the Commission to reconsider proposals for an additional complaints body as part of, or separately to, any accreditation process.

Additionally, we would urge the Commission to seek specific submissions from each State and Territory complaints body or disciplinary tribunal before proceeding further with such a proposal.

Yours faithfully

A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes or dates.

Frank Ederle

**CHIEF EXECUTIVE OFFICER**