

8 November 2018

Professor Helen Rhoades  
Australian Law Reform Commission  
GPO Box 3708  
**Sydney NSW 2001**

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

Dear Professor Rhoades

**VLSB+C Submission to Australian Law Reform Commission: Review of Family Law System Discussion Paper**

Thank you for the opportunity to comment on the Australian Law Reform Commission's Review of the Family Law System Discussion Paper. Consideration of the appropriate role of the family law system in Australia and the best ways for it to be responsive to the needs of those who require its services is both important and timely.

The Victorian Legal Services Board and Commissioner (VLSB+C) are independent statutory authorities, responsible for regulation of the legal profession in Victoria. The aims of the VLSB+C are to:

- ensure the effective regulation of the legal profession and the maintenance of professional standards
- address the concerns of clients of law practices and lawyers through the regulatory system and provide for the protection of consumers of legal services
- ensure the adequate management of trust accounts, and
- ensure that the Legal Profession Uniform Law is implemented effectively in Victoria.

A core function of the VLSB+C is to receive and handle complaints about lawyers. In addition to this, the VLSB+C has an important educative role, which involves:

- educating lawyers about issues of concern to the legal profession and consumers of legal services, and
- educating the community about legal issues and the rights and obligations that flow from the client-lawyer relationship.

Complaints about family law practitioners are consistently our highest area of complaints, comprising on average a quarter of all complaints to the VLSB+C per annum. The VLSB+C can therefore offer some perspective on the number and type of grievances that occur between lawyers and their clients in family law matters.

An internal analysis of formal complaints in the area of family law shows that over a ten-year period (2007-2018), the number of complaints VLSB+C received amounted to just under 5,000. Of these, approximately 75 per cent were either withdrawn, dismissed or required no further investigation. These figures indicate that, despite the large volume of complaints, the majority of those complaints have not resulted in findings of unsatisfactory professional conduct or professional misconduct being made against family law practitioners. The majority of complaints in relation to family law practitioners arise in the context of costs and poor service and are dealt with by applying alternative dispute resolution and targeted engagement with individual practitioners.

I note also that we frequently receive complaints about the tactics employed by lawyers retained by the complainant's opponent. These complaints are often misconceived and do not result in disciplinary findings. These complaints often arise from a lack of understanding by the complainant about the role played by the lawyer for the opposing side; in particular, that they are looking after the interests of their own client at a time when both parties are facing one of the most difficult times of their lives. We do sometimes see examples of lawyers who become too close to their client and overstep the mark. In such cases, we do investigate and discipline if appropriate (the following link provides an example: <http://www6.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VCAT/2017/242.html>). Judicial officers may also refer inappropriate conduct directly to us.

With regards to the proposal to require all family law practitioners to complete at least one unit of family violence training annually (Proposal 10-6), the VLSB+C suggests that it may be appropriate for the ALRC to consider the merits of training for other legal practitioners, not just those working in family law. The effects of family violence extend to many areas of the law and it is pertinent that legal practitioners are aware of the complexities of the family law system, as well as the ongoing effects of family violence on relationship dynamics and victims.

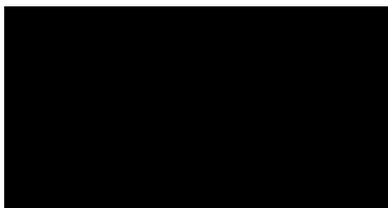
The VLSB+C requests that any changes to the regulation of practitioners occur only after appropriate consultation with regulatory bodies in each State and Territory. Consultation will be of particular importance if the proposal to establish the Family Law Commission (Proposal 12-1) proceeds. The Discussion Paper states that the Family Law Commission (FLC), as part of its responsibilities, will investigate and take action on complaints against professionals across the family law system. As this is a core function of the VLSB+C in relation to legal practitioners, we are keen to discuss the practicalities about this aspect of the FLC to avoid duplication of responsibilities. From the content of the Discussion Paper it is unclear what function the FLC might have that goes beyond the current remit of the VLSB+C and other legal regulators. The regulatory framework for the legal profession is complex with different legal regulators in each of the States and Territories and only Victoria and New South Wales currently governed by the *Legal Profession Uniform Law*. Given this, we would welcome an opportunity to discuss this proposal further.

In addition, given our experience in receiving family law complaints, we anticipate that the FLC would receive a large volume of complaints from across Australia. There is a risk that the FLC may become overwhelmed with responding to complaints about individual practitioners, potentially jeopardising the progress of more proactive work regarding broader system reform.

As such, the VLSB+C would be interested in having an ongoing discussion with the ALRC about the merits of the FLC having a complaints function as part of its remit. The VLSB+C considers that the FLC would be better placed to conduct reviews and investigations in relation to complex cases where there may have been multiple failings across the whole system. In addition, providing further resources to front line staff, such as Alternative Dispute Resolution (ADR) professionals, could help to prevent complaints against legal practitioners from occurring in the first place by resolving disputes outside of the courtroom.

In closing, we would welcome an opportunity to discuss the details around these proposed reforms with the ALRC. Should you wish to contact the VLSB+C, Ms Kerri-anne Millard, Manager, Policy and Regulation, is the appropriate contact in my organisation and can be reached by [REDACTED].

Yours sincerely



Fiona McLeay  
**Board CEO and Commissioner**