

14 March 2022

Mr Kelvin Strange  
Chief Executive Officer  
Law Society Northern Territory  
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Dear Colleagues,

**Proposed Amendment to Continuing Professional Development Scheme in response to Bullying, Discrimination and Sexual Harassment within the Legal Profession (February 2022)**

Thank you for the opportunity to make a submission about possible amendments to the CPD scheme in response to bullying, discrimination, and sexual harassment in the legal profession.

**About DCLS**

As you know, Darwin Community Legal Service ('DCLS') is a non-profit community-based effort committed to legal and social justice and the protection and expansion of rights, fairness, and wellbeing in the NT. We especially work with people who are vulnerable or marginalised. DCLS provides legal help, advocacy, and support services; collaborates to understand obstacles to justice and try to achieve reform; and promotes understanding and acceptance of rights, justice, and inclusion.

DCLS acknowledges the Larrakia people as the Traditional Owners of the Darwin region. We pay our respects to Larrakia elders past, present and emerging. We also acknowledge and pay our respects to the Traditional Owners of country throughout the NT and throughout Australia. We recognise their continuing connection to land, waters, and culture. DCLS supports Voice – Treaty – Truth.

It is also important to note that the DCLS Seniors and Disability Rights Service is a resource for the Territory which collaborates to advance the rights of people with a disability in the NT.

**1. Support for Option 1**

Given the nature and extent of the issues, as identified through work outlined in the Membership Consultation Paper, - Option 1, namely the introduction of an additional core competency - is appropriate, necessary, and proportionate.

We acknowledge the courage, leadership and struggle to bring these changes to the fore and congratulate all involved for the momentum to achieve cultural change, involving all members of the profession.

At the same time, we want to caution against an interpretation or assumption that the only 'discrimination' to be addressed by legal professional conduct rules and CPD is gender-based or sexualised discrimination in the workplace.

While we strongly support efforts to address these forms of discrimination, we are concerned that the wording:

‘bullying, discrimination, and sexual harassment within the legal profession’,

may result in ‘bullying’ and ‘sexual harassment’ *mapping onto* ‘discrimination’ such that this is understood only as relating to gender-based or sexualised discrimination in the workplace.

If the term ‘discrimination’ is defined to encompass all unlawful discrimination, a different problem arises – namely that other forms of discrimination will likely need additional, and full, treatment.

Two examples are lack of focus in professional legal conduct rules, and CPD requirements, regarding:

- Relations and issues relating to the legal profession and Aboriginal and/or Torres Strait Islander people and peoples - including unconscious bias, structural racism, and lack of cultural safety, and
- Discrimination within the legal profession, and by members of the profession, against people with a disability – including unconscious bias and ableism.

We urge consideration of the proposed language, to help promote and encourage work on these additional issues, both of which are highly important in the NT.

These examples point to the need for work – including language - to counter forms of discrimination which require specific treatment, and which are not adequately amplified or addressed by the current initiative.

## 2. Additional background

The Law Council of Australia (‘LCA’) has observed that certain groups are more vulnerable to substantial and multiple legal problems, resulting in higher levels of legal need relative to the general population. At the same time these groups are also more likely to experience discrimination when interacting with the legal system.<sup>1</sup>

These ‘priority groups’ include Aboriginal and Torres Strait Islander people, people with a disability and older people (among many others).

People in these groups often experience compounding discrimination due to their intersecting identities, for example, an Aboriginal person with a disability who lives in a remote community.<sup>2</sup>

### *Aboriginal and Torres Strait Islander peoples and people*

Work on many fronts by the LCA, LSNT and many others relating to reconciliation, encouraging Indigenous people to enter the profession, encouraging reform of policies, practices, and services,<sup>3</sup> are not yet reflected in professional conduct rules. However, there is much to build on.

<sup>1</sup> Law Council of Australia, *The Justice Project* (Final Report, August 2018) 55 (*‘The Justice Project’*)

<sup>2</sup> *Ibid* 20, 53.

<sup>3</sup> Law Council of Australia, *Policy Statement on Indigenous Australians and the Legal Profession* (Statement, February 2010) 23.

The LCA's Justice Project report noted that experiences of 'marginalisation and discriminatory justice responses has affected Aboriginal and Torres Strait Islander peoples' confidence in the justice system', resulting in a reluctance to engage with it.<sup>4</sup>

The LCA stressed that 'ongoing, regular cultural competence training—informed and led by Aboriginal and Torres Strait Islander people and organisations—is required across the justice sector' to counteract this perception.<sup>5</sup>

### *People with Disability*

The LCA has also made a clear commitment to the vision and outcomes of the National Disability Strategy, while advocating for stronger rights protection in line with the Convention on the Rights of Persons with Disabilities and various other reforms aimed at improving access to justice for people with disability.<sup>6</sup>

The LCA has identified that inadequate training in the profession about disability further perpetuates discrimination through entrenched stigma and social exclusion,<sup>7</sup> and recommended that disability training be undertaken by all practitioners, as well as members of the judiciary and staff employed in the justice system.<sup>8</sup>

This position is supported by the Disability Strategy which affirms the need for improved disability training across sectors that interact with persons with a disability.<sup>9</sup>

Improved training in the legal profession is a key step to challenging these stigmas and equipping the profession to provide more appropriate services.<sup>10</sup> In turn, a more educated profession is better placed to mitigate barriers to accessing justice and eliminating discrimination against people with disability.

## **3. RECOMMENDATIONS**

For the above reasons, we recommend:

1. That Option 1 proceed, with the proviso that the language in the proposal, which has the word 'discrimination' interposed between 'bullying' and 'sexual harassment' within the legal profession - be carefully considered to avoid dampening work to address additional forms of discrimination.
2. That a major commitment be made, in collaboration with affected groups and stakeholders to address discrimination by and within the legal profession towards Aboriginal and Torres Strait Islander peoples and people.
3. That a major commitment also be made, in collaboration with affected groups and stakeholders to address discrimination by and within the legal profession towards people with a disability.

Thank you again for the opportunity to for input.

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<sup>4</sup> *The Justice Project* (n 1) 25.

<sup>5</sup> *Ibid.*

<sup>6</sup> Law Council of Australia, Submission to the Department of Social Services, *A new National Disability Strategy – Stage 2 consultations* (30 October 2020) 5 ('*Submission to the National Disability Strategy*').

<sup>7</sup> Law Council of Australia, *People with Disability* (Final Report, August 2018) 34.

<sup>8</sup> *Submission to the National Disability Strategy* (n 6) 10.

<sup>9</sup> Department of Social Services, *Australia's Disability Strategy 2021-2031* (Report, 2021) 31.

<sup>10</sup> *Ibid.* 35.

Regards,



Judy Harrison  
Principal Solicitor