FERAE NATURAE

One of the ironies of our federal system, which celebrates its centenary this year, is that the key provision of our constitution that unified the nation commercially — Section 92 — has not been enthusiastically embraced by those who have so often been involved in interpreting and profiting from it: the legal profession. Far from being "absolutely free", the interstate legal trade has been bound by restrictions that would have made colonial customs officers blush.

The development of the National Legal Services Market (NLSM), to which the NT is now party along with NSW, Victoria, ACT and South Australia, is part of a slow evolution that is allowing legal practitioners enhanced capacity to operate — and indeed compete — interstate. It is a move away from the arcane jurisdictional barriers that have contributed to the suspicion that often surrounds the legal profession.

This is not to say it is not a challenging process — particularly for practitioners and regulatory bodies in smaller jurisdictions such as the Northern Territory. The Council of the Law Society will this month consider the NLSM Protocol, a document that outlines the ways in which different jurisdictions and their respective regulatory bodies can develop constructive and cooperative relationships within this changing legal landscape. Central to the Protocol is the adoption of areas of agreement between jurisdictions that can be enacted immediately, and the identification of areas in which greater cooperation and uniformity will be sought over time.

The key areas of the Protocol are:

1 **Information exchange**

To the extent that confidentiality provisions apply within each jurisdiction, there is a commitment to maximise information exchange between participants. This includes notification of interstate opening of branch offices and trust accounts in host states or territories; information about conditions, limitations, restrictions, prohibitions and court or disciplinary tribunal decisions imposed on practising certificates; and information relating to practitioners declared bankrupt, in receivership, management or administration. The Protocol also seeks to standardise data collection.

2 **Conduct of complaint investigations**

This effectively sets out where complaints are to be investigated, according to where the complaint arises or its most suitable jurisdiction, with provision for information flows to other regulatory bodies where appropriate. Where complaints can realistically be held in more than one jurisdiction, the rights of complainants are to be taken into account. In any case, the emphasis is on mutual agreement between jurisdictions.

3 **Principal place of practice**

The protocol allows for the definition of a principal place of practice to expedite the resolution of any jurisdictional problems that might arise.

4 **Fidelity Fund arrangements**

The Protocol seeks to outline where liability for defalcation might rest between, or in some cases among, different fidelity funds. In general this will depend on which fund is being contributed to; in the case where contributions are made to more than one fund, the "site" of defalcation would determine liability; in cases where this is unclear respective liabilities would be dependent on relevant legislation and consequent negotiations.

5 **Trust Account inspections**

While responsibility for trust account inspections resides with the jurisdiction in which the account is established, the Protocol allows for mutual information exchange and cooperation among and between jurisdictions in which multiple trust accounts might be held.

The principal objective of the Protocol is to reduce regulatory and administrative burdens.

Maria Ceresa, Executive Officer

Also — particularly in the area of information exchange — it has potential benefits in data collection and comparative local/national analysis. It is worth noting in this context that the surgical profession has been at the forefront of such local (practice-based) and national data analysis, leading to greatly enhanced monitoring and bench marking of skills and procedural specialities, and potential reduction of professional liability claims against them.

A benefit to the profession, no doubt but an advantage for clients as well.

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