

11th November, 2019

Ms. Libby Fulham
Executive Director
Legal Practice Board of Western Australia
(LPBWA)
Level 6, 111 St Georges Terrace
PERTH WA 6000

Attention: Professional Affairs Committee
(PAC)
general@lpbwa.com

Dear Ms. Fulham

USE OF THE TITLE “SENIOR LEGAL COUNSEL” BY IN-HOUSE LEGAL COUNSEL

1. We refer to your letter dated 31 October 2019 (“the Letter”) to WA in-house legal counsel using the title “Senior Legal Counsel” or variants thereof which include the words “senior” and “counsel” (the “affected legal counsel” (ALCs)) The Letter requested that ALCs amend their title by ceasing to use the words “senior” and “counsel” in their position title, on the basis that this is somehow misleading and potentially in contravention of the LP Regs and LPA (as these terms are defined in the Letter).
2. We also refer to two telephone calls since that date. The first was on 4 November 2019, between your office and Ms Valerie Hodgins, an Association of Corporate Counsel (ACC) WA Committee member, ACC WA Committee Immediate Past President and a former LPBWA Board member. The second call was on 5 November, 2019 between your office and Mr Chris Drummer, Director, Policy, Projects and Advocacy, ACC Australia and Asia Pacific.
3. ACC Australia is writing to object to the LPBWA’s requirement as advised in the Letter on the grounds set out below.
4. ACC Australia is the peak body representing the in-house legal profession in Australia. It is part of a global network of more than 45,000 in-house legal counsel employed by over 10,000 organisations in more than 85 countries. ACC

Australia is proud to represent the interests of lawyers working for corporations and government in Australia. In-house lawyers constitute approximately 25% of the total Australian legal profession, or about 14,000 practitioners, making ACC's role as the 'voice of in-house lawyers' a vital one for the furthering and advancement of the profession.

5. This is an interim submission from ACC Australia, which we wish to have considered at the next meeting of the LPBWA Professional Affairs Committee (PAC) on 14 November 2019. ACC will provide a more detailed submission for consideration ahead of PAC's subsequent meeting on 12 December, 2019.
6. Given the short notice provided to ALCs in WA to comply with the demand set out in the Letter, ACC Australia respectfully asks that the PAC:
 - grants an extension of time for ACC Australia and ALCs to lodge submissions ahead of the subsequent meeting of PAC on 12 December 2019
 - gives an undertaking that "no action" will be taken against ALCs who fail to change their title by 21 November 2019, until after the meeting of PAC on 12 December 2019 (and until such time as any decision from that meeting is communicated).
 - considers reversing its decision to pursue ALCs at either its 14 November 2019 or its 12 December 2019 meetings.
7. To assist ACC Australia with its final submission, ACC Australia asks PAC to:
 - a) provide a basis for the authority it has to make such a decision and its right to pursue ALCs in this regard
 - b) provide the reasons for that decision
 - c) advise why there was no consultation with ACC Australia or the WA in-house legal community when making such demand, given that the title "Senior Legal Counsel" is a common description used by in-house legal counsel and has been for many years without issue (which will affect numerous practitioners in WA);
 - d) identify the specific rule, regulation or legislation upon which it relied for its conclusion that the offending titles are "misleading". This was not made clear in the Letter sent to ALCs;
 - e) identify who is being or has been misled, particularly in circumstances where some ALCs have been practising under the title "Senior Legal Counsel" for many years;

- f) explain how this demand, if upheld, will impact on those “Senior Legal Counsel” using such title who primarily reside and work in other States and Territories but work from time to time in WA;
- g) if thought necessary, provide ALCs with the same caution during this consultation period with ACC Australia, as was recently offered to “Special Counsel” in private law firms.
- h) provide reasons why the decision to pursue Special Counsel [was reversed](#) as announced on 11 October 2019.
- i) inform ACC whether due to actual or perceived conflicts of interest, any SC/QC members of PAC excused themselves from the deliberations, or decisions concerning, ALCs at the relevant meetings of PAC at which this matter was discussed.

ACC Australia’s Preliminary Objections

The preliminary matters we wish to raise regarding the Letter are as follows:

- A. Neither the LPBWA nor PAC consulted with ACC Australia, or the in-house legal profession in WA generally, before making its decision to send the Letter.
- B. [ACC Australia](#) is part of [ACC Global](#) and WA is the first jurisdiction in the world, to the best of our knowledge, to object to the term “Senior Legal Counsel” being used by in-house legal counsel.
- C. ACC has an excellent relationship with the Bar Associations in each Australian jurisdiction. In fact, ACC and the Victorian Bar Association have a ‘Meet the Justices’ event this month in Melbourne where members of the Victorian Bar, Judges of the Federal Court and ACC’s most senior in-house counsel representing some of the largest ASX100 listed organisations in Australia are meeting. One objective is for all attending parties to better understand how ACC’s in-house legal counsel can direct brief barristers. This development in WA is in stark contrast to the spirit of co-operation with the Bar in other States.
- D. The use of the term “Senior Legal Counsel”, as any Google or Linked-In search will reveal is widespread, indicating over 40,000 hits and over 1,100 job search results. Such is the widespread use of the offending titles, that across Australia alone they likely exceed 1,000.

- E. In-house counsel are employed by some of the largest national and international organisations working across a number of Australian and international jurisdictions. These in-house counsel often practise across State and Territory borders and to expect them to use different titles only while practising in WA will lead to confusion and administrative burden.
- F. The job title ascribed to in-house counsel is normally given to them by their employer as part of their job description and is therefore entrenched in their contract of employment. The title "Senior Legal Counsel" predates the September 2001 introduction of the office of "Senior Counsel" and has been used for decades in Australia by in-house counsel without issue. We are not aware of any cases where people have suggested they were somehow misled and thought they were dealing with "Senior Counsel" or "SCs" from the Bar.
- G. We note that the LPBWA Special Counsel "no action" [communication of 11 October, 2019](#) warned law firms as follows:

'However, the Board cautions firms to be mindful of their legal obligation not to mislead the court, members of the public, other practitioners and their clients regarding the skill or expertise purportedly held by solicitors employed by the firm and reserves the right to deal with matters where that obligation is shown to have been breached.'

ACC Australia will respond more fully to PAC for its meeting on 12 December 2019, but submits that:

- Judicial officers and the court
- Members of the public
- SC's and their juniors
- Other in-house counsel
- Lawyers in private law firms

have not been, and will not be, misled regarding the skill or expertise held by in-house legal counsel using the title "Senior Legal Counsel" or similar.

Please contact Chris Drummer, Director, Policy, Projects and Advocacy, ACC
Australia and Asia Pacific c.drummer@acc.com or 0411264734 at first instance
should you have any questions

Yours faithfully



Tanya Khan

Vice President and Managing Director

Association of Corporate Counsel
Australia and Asia Pacific