

## **FINAL DRAFT**

### **ACLA - In-house Requirements for National Legal Profession**

ACLA supports the introduction of a simplified, effective and consistent form of regulation for the legal profession nationally but would like to see the following matters, which affect in-house lawyers (both private and public sector) addressed in the relevant legislation:

1. Legal qualifications obtained within any state in Australia should be recognised nationally to enable all lawyers to operate in all states and territories.
2. There should be uniform national rules regarding the undertaking of CLE.
3. All lawyers engaged in legal practice in Australia should be required to obtain a standard form of practising certificate as a minimum requirement, which is subject to a common disciplinary regime. The practising certificate could be coded to signify the type of practice the certificate holder is engaged in – similar to the NSW model (ie private practice, unrestricted, government, supervised etc). Lawyers required to obtain a practising certificate as a result of the reforms (where previously there was an exemption from the requirement to obtain a practising certificate) should not be required to incur the costs of obtaining such a certificate in the initial transitional phase.
4. There should be no differentiation between in-house and external lawyers regarding the rights and obligations under the Solicitor Rules. Some rules however should be modified for application to in-house lawyers because of their differing operating environment. For example, the requirement to undertake CLE for trust accounting should not apply for in-house lawyers and nor should there be restrictions on in-house lawyers acting for related entities and joint ventures.
5. A legal practising certificate should entitle the holder to:
  - i. Represent - as a lawyer - his/her organisation, whether it is a corporation, the Government (in whatever guise) or a statutory agency (as the case may be).
  - ii. Represent - as a lawyer - any related entity or agency of his/her employer.

Undertake appropriate pro bono work.
6. The mandatory continuing legal education requirements for in-house counsel should be tailored to the needs and particularities of in-house practice (i.e. in both the public and the private sectors).

- 7. The regulatory regime should recognise that an in-house lawyer owes the same professional duties to his/her client as does any other lawyer, particularly in the area of legal professional privilege, regardless of any employment relationship that may exist between the in-house lawyer and the client.**
- 8. The Fidelity Fund requirements of the regulatory regime should not apply to in-house lawyers unless their role involves the holding of trust monies.**
- 9. The regulations should not preclude use by in-house lawyers of customary position descriptions including "Senior Counsel" as may be adopted within their organisation.**