



Law Council  
OF AUSTRALIA

Martyn Hagan  
Acting Secretary-General

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Mr Jason Rogers  
Secretary  
The Consultative Council of Australian Law Reporting  
Incorporated Council of Law Reporting for Queensland  
Level 1, 415 George St  
Brisbane Qld 4000

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Dear Mr Rogers

**CONSULTATIVE COUNCIL OF AUSTRALIAN LAW REPORTING – CONFERENCE ON  
THE FUTURE OF LAW REPORTING: 2012 REPORT**

I refer to a letter of 1 March 2013 from the Chair of the Consultative Council of Australian Law Reporting, the Hon Justice Steven Rares, regarding the Report of the 2012 Conference on the Future of Law Reporting in Australia held in Brisbane. The Report raised a number of issues in relation to which comments were sought.

I am pleased to provide the following comments in this letter which has been compiled with the assistance of the New South Wales Bar Association and the Queensland Law Society. I thank you for the extension of time in which to make these comments.

**1. Background**

On 2 August 2012, the Law Council of Australia was invited to attend the 32<sup>nd</sup> Annual Meeting of the Consultative Council of Australian Law Reporting (CCALR) on the Future of Law Reporting in Australia. The conference was held in Brisbane and Ms Louise Pennisi, Policy Solicitor from the Queensland Law Society, attended as the Law Council of Australia representative. Ms Pennisi has noted that it was an interactive and insightful conference which invoked considerable discussion about the future of law reporting and how to best address the delivery of this service.

The Law Council would like to commend the CCALR for this initiative.

**2. The Report**

The Report is well written, clear and easy to follow. I am advised by Ms Pennisi that it is an accurate summary of the issues raised and the suggestions proffered at the conference.

The Report notes that the principal sources of Australian case law are the judgments delivered by the High Court, the Federal Court, the Family Court and the state and territory Supreme Courts. Many unreported judgments of these courts are now published on free online databases. They are also available through subscription to services provided by legal publishers, which also allow users to access legal commentary.

A proportion of delivered judgments are selected for authorised reports, which are designated by the relevant court as the authorised version for citation, by convention, or through a Practice Direction. Each of the Australian superior courts has a designated set of authorised reports (other than the Family Court).

Councils of law reporting in most states and territories publish printed authorised reports or arrange for a legal publisher to publish printed or online authorised reports. At present none of them publish online themselves.

Authorised reports generally seek to:

- Engage independent editors of a high calibre;
- Classify the judgment under a system of catchwords;
- Use headnotes prepared by legally qualified reporters or editors; and
- Ensure that all draft reports are submitted to the deciding judges for approval.

A number of advantages of authorised reports are noted in the Report. However, noted disadvantages include delays in publication and the restrictions of print only reports.

The Report raises a number of concerns expressed by:

- The judiciary about a trend for advocates to cite large numbers of unreported judgments rather than authorised reports;
- The legal profession about the high cost of access to authorised reports which results in many practitioners using free online unreported judgments;
- Academics about a number of cases of academic interest not being selected for authorised reports; and
- The state and territory councils of law reporting that they are receiving less revenue from the sale of printed reports and from royalties for online publication by legal publishers. Although these councils could consider online publication themselves there appear to be a number of significant barriers to such an approach or to other revenue raising activities.

The Report notes that legal publishers have observed a strong shift in demand to online reports although the demand for printed reports is still sufficient for their continuation at this stage. The legal publishers suggested that the optimal model for publication of an

authorised report is for a commercial publisher to have an exclusive contract for the production and sales process for print and online reports.

The Report also notes that the legal practitioners at the conference observed that practitioners who are well resourced tend to subscribe to the services provided by the legal publishers but that many of these practitioners are reducing the number of print services subscribed to. Practitioners who are less well resourced tend to rely on the free online services.

### ***Legal profession perspectives***

Cost, convenience and accessibility to online materials continue to be the three main concerns emanating from the legal profession with respect to authorised law reporting. As the Report states:

*In summary, the speakers agreed about the importance of having a properly curated system of law reporting in Australia – but [were] concerned that issues of cost and convenience were causing many members of the legal profession to cease to use these materials as their core sources of authority. No obvious method of reversing this trend was suggested.*

The Law Council agrees with this summation and notes that the shift away from the use of hard copy authorised reports to online unauthorised reports appears to be a generational as well as an educational and awareness issue.

Previously, universities and law firms were predominately paper based. The focus at university was obtaining photocopied copies of authorised cases from the law reports. With the proliferation of the internet, the emerging trend now is to access material online, with document authorisation and authenticity a secondary consideration.

It is also important to note that new and early career lawyers may not be aware of the roles of the Councils of Law Reporting and may not be aware of the court practice directions requiring the use of authorised court reports in proceedings. In this regard, the Law Council commends the Incorporated Council of Law Reporting for the State of Queensland for compiling all the relevant practice directions relating to authorised reports, at: <http://www.queenslandreports.com.au/authorised/practice-directions>

The Law Council also recommends that consideration be given to expanding awareness of authorised law reports among university students and new and early career lawyers. This may be done through the CCALR:

- Liaising with universities about law reporting;
- Liaising with key stakeholders regarding law reporting websites and requesting that there be links to the Councils of Law Reporting pages;
- Publishing articles/awareness pieces in University, Law Society and Bar Association publications; and
- Participating in Continuing Legal Education or Continuing Professional Development activities.

The Law Council would be happy to assist with such initiatives.

In relation to the Report's discussion of the perspectives of users, the Law Council refers to page 14 and under the heading "less well-resourced practitioners" requests a revision as follows:

*Amongst the large proportion of solicitors who are in small practices (noting that 80% of Queensland law firms are small law firms), many were said to be "doing it tough." For financial reasons, they too are relying upon free online databases.*

### **A proposed model for publication of authorised reports**

As a result of the subscription prices currently charged by the major commercial publishers, the Law Council would not support any nationwide move to place all authorised reporting in the hands of commercial publishers. The Law Council supports the current Queensland and New South Wales models whereby a Council of Law Reporting is directly responsible for the publication of authorised reports.

Ideally, to ensure consistency throughout jurisdictions, the Law Council supports the establishment of a national authorised reports database, with links to free online databases.

The Law Council notes that in the United Kingdom, subscription and pay per view models are in place (<http://www.iclr.co.uk/>). Unreported versions of judgments on the British and Irish Legal Information Institute website (Bailii) are beginning to be linked to authorised versions on the Independent Council of Law Reporting website which can be accessed via both models. This model appears to merit further examination.

### **Further initiatives**

In relation to establishing a national authorised reports database and the courts' preference for authorised reports, the Law Council notes that only five courts appear to have published practice directions on this issue:

- Federal Court of Australia - Practice Note CM 2: List of Authorities, Citation of Cases and Legislation for Proceedings Generally
- Supreme Court of South Australia – Consolidated Practice Directions para.5.6.4.
- Supreme Court of Tasmania – Practice Direction No 4 of 2009
- Supreme Court of Victoria – Practice Note 9 of 2011
- Supreme Court of Western Australia – Consolidated Practice Direction para.2.1.14.

It may be necessary for the CCALR to liaise with all relevant courts to consider adopting their own practice directions or a uniform practice direction applicable in all relevant courts such as *Practice Direction: Citation of Authorities (2012) (England and Wales)*.

## **Conclusion**

In summary, the Law Councils supports the continuation and the expansion of authorised law reporting in Australia. To that end it supports the proposal to engage with and include academics in the case selection process of law reporting. It also notes that to keep up with the market, investment in new technology and online services is required.

The Law Council values the service provided by the councils of law reporting and supports further funding from the state, territory and Commonwealth governments for this service.

Please contact me if you have any queries in relation to the comments in this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Martyn Hagan', written in a cursive style.

**Martyn Hagan**  
**Acting Secretary-General**