

Private & Confidential

17 April 2018

Mr Mark Ritter SC
Ministerial Review of the State Industrial Relations System
Secretariat
Level 4, Gordon Stephenson House
140 William Street
PERTH WA 6000

By post and email: irreviewssecretariat@dmirs.wa.gov.au

Dear Mr Ritter,

Ministerial Review of the State Industrial Relations System

I refer to:

1. The letter to you from the Legal Practice Board (**Board**) dated 10 November 2017;
2. Your letter to Board dated 23 March 2018; and
3. The Interim Report of the Ministerial Review of the State Industrial Relations System published on 20 March 2018 (**Interim Report**).

Thank you for your invitation to make submissions on the proposed recommendations about the interaction between section 12 of the LPA and section 112A of the *Industrial Relations Act 1979* (**IR Act**).

The Board, by its delegate, the Professional Affairs Committee (**Committee**), considered your letter and the Interim Report at its meeting held on Thursday, 12 April 2018.

I note that the Board is constituted under the *Legal Profession Act 2008* (**LPA**) and, amongst other statutory responsibilities, has responsibility to provide for the regulation and enforcement of the prohibition on engaging in, or representing an entitlement to engage in, legal practice unless the person is an Australian legal practitioner. It follows that any amendment to the IR Act may invoke that responsibility and the Board has considered the Interim Report within that framework.

After consideration of the Interim Report, the Board wishes to make submissions in relation to the right of appearance in the Western Australian Industrial Relations Commission (**Commission**).

The Board has formed the view that legal practitioners should be able to appear in the Commission as of right, and without any question of obtaining leave.

In that respect the Board made the observation that the requirement to seek leave adds an extra level of complexity to matters heard in the Commission that is not found in other courts or tribunals.

Further, the Board is of the view that the possibility of leave being refused at the commencement of a hearing in the Commission, when the person concerned otherwise expects to be represented by their chosen counsel, risks that person being placed at a significant and unexpected disadvantage to their opponent in the hearing.

The Board noted the concern in relation to perceived or actual power imbalances between represented and unrepresented parties. However, the Board made the observation that not infrequently unrepresented parties appear against represented parties in other legal courts and tribunals and when that occurs procedures are in place to ensure that both parties receive a fair hearing. No doubt the Commission could adopt similar procedures in the same situation.

Finally, the Committee noted that the Board's submissions, set out in the Board's letter to you dated 10 November 2017, that disqualified persons should be prohibited from being Registered Industrial Agents or appearing as an agent in the Commission were not referred to in the Interim Report.

Accordingly, the Board has instructed me to reaffirm its view that disqualified persons should be prohibited from being Registered Industrial Agents or appearing as an agent in the Commission. In that regard, the Board made the observation, that a disqualified person, as defined in section 3 of the LPA, is prohibited from engaging in legal practice under the LPA. This section is intended to protect the interests of members of the public seeking legal advice and representation. The Board considers that disqualified persons should not be permitted to represent parties under the IR Act where considerations for the protection of members of the public are just as important.

Should you wish to discuss this matter, please contact me on (08) 6211 3627 or by email lfulham@lpbwa.com.

Yours sincerely



Libby Fulham
Executive Director
Legal Practice Board