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28 April 2023

Coroner McGregor
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

By email: cpuresponses@coronerscourt.vic.gov.au

Dear Coroner McGregor

Investigation into the death of Veronica Nelson - Response to Recommendation 17

Your ref: COR 2020 000021

Our ref: D-23-125725

Thank you for your letter dated 30 January 2023, notifying me of the recommendation to the Victorian Legal Services Board and Commissioner (**VLSB+C**) contained in Coroner McGregor's Finding with inquest into the death of Veronica Nelson. I commend Coroner McGregor for the thorough and compassionate way he dealt with this difficult matter and thank his Honour for his diligence and insight.

Our commitment to improving First Nations people's experience of the justice system

The VLSB+C is committed to demonstrating leadership in the work required to improve First Nations people's experience of the justice system. We understand the need to take meaningful action to improve the cultural safety and standard of legal services provided to First Nations clients, in a way that meets their justice needs, and recognise we have a significant role to play as the regulator of the Victorian legal profession, and as a funder into the legal ecosystem. We make this commitment conscious of the negative systemic effect that the justice system has had on the wellbeing of First Nations. We recognise that work to address this can only be achieved in partnership with First Nations people.

Work to improve First Nations clients' experience of the justice system meets all three of our strategic objectives:

- **Protect and empower consumers** – by listening to First Nations peoples to understand what they need from lawyers and seeking to improve the ability of lawyers to provide culturally safe legal services to First Nations clients,
- **Improve legal practice and ethics** – through supporting the upskilling of lawyers to practice in a culturally safe and responsible way, and
- **Improve access to justice** – by increasing the likelihood that First Nations clients who need a lawyer receive culturally safe legal services that meet their justice needs, and by directly engaging with Aboriginal controlled legal service providers to understand how we can best assist them.

We are also committed to advancing reconciliation through the development of our Reconciliation Action Plan (**RAP**) and the education of our own staff and Board through participation in Truth Telling training sessions at the Aboriginal Advancement League. These sessions extend on the Koori Heritage Trust Building Aboriginal Cultural Competency training provided to targeted staff in 2022.

Our response to Recommendation 17

Recommendation 17, as it relates to VLSB+C, is that the Victorian Legal Services Board (**Board**) and Victorian Legal Services Commissioner (**Commissioner**) "consider including Aboriginal and/or Torres Strait Islander cultural

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awareness training as a mandatory requirement of continuing professional development for practising legal practitioners.”

I confirm that the Board and I, in my capacity as Commissioner and Board CEO, have considered this recommendation and how we may best implement it. Noting that recommendation 17 is also directed to the Victorian Bar (**the Bar**) we have consulted with the Bar in preparing our response. The Bar also consulted with us in developing their own separate response.

Victorian lawyers’ First Nations training needs

We strongly agree with Coroner McGregor that Victorian lawyers would be aided by relevant First Nations cultural awareness training when they commence legal practice, and refresher training at regular intervals throughout their careers. Lawyers are the interface between the community and the justice system; they effectively administer the law more frequently and directly than the judiciary or other branches of government. We therefore consider that all lawyers should understand the way in which the justice system has significantly contributed to the disadvantage and injustice experienced by First Nations peoples, and be competent to serve First Nations clients well.

Our ability to mandate training

In practice, the VLSB+C’s ability to mandate cultural awareness continuing professional development (**CPD**) for lawyers is limited. The Law Council of Australia develops CPD rules for solicitors and the Australian Bar Association develops CPD rules for barristers. As such, we do not have any legislative or regulatory authority over the content of the CPD rules for solicitors or barristers, and have no power to mandate them to undertake particular CPD, outside disciplinary settings.

We do, however, have the power (under Rule 11 of the *Legal Profession Uniform Continuing Professional Development (Barristers) Rules 2015*) to direct barristers in their first three years at the Bar to undertake ‘additional CPD activities’, which we intend to use in response to Coroner McGregor’s recommendation.

In consultation with the Bar, we will use this power to direct barristers in their first three years to undertake First Nations cultural capability training, as training of this kind becomes available. The Bar has indicated in principle support for this approach, in recognition that junior members of the Bar are more likely to be undertaking appearance work in the Bail and Remand Court and engaging with First Nations clients in the types of circumstances that arose in Ms Nelson’s case. We will work with the Bar to ensure any training we mandate is informed by the needs of First Nations clients in the justice system and designed and delivered by First Nations controlled organisations.

Mandating First Nations cultural capability training for all new barristers provides impetus for the development of a structured and staged approach to improving capability over a three year period, through participation in training tailored to this cohort’s specific needs and delivered via a range of modalities. It also provides the opportunity to pilot a training program and monitor and evaluate the outcomes. Additionally, it ensures that, in future, all barristers will have undertaken First Nations cultural capability training.

Other ways we will support First Nations cultural awareness CPD for Victorian lawyers

For other members of the profession (in respect of whom we have no current ability to mandate training¹) we have a number of other regulatory and funding levers we can utilise to meet the spirit of the recommendation. These levers include:

- Funding activities
- CPD auditing activities
- Communications reach across the profession

Funding activities

The Board is responsible for administering the Public Purpose Fund (**PPF**) which is a statutory fund established by the *Legal Profession Uniform Law Application Act 2014 (Vic)* (**the Act**). The PPF's primary function is to meet the costs of regulating the Victorian legal profession, while also providing funding for several other purposes that benefit the general public and consumers of legal services in particular with the aim of increasing access to justice.² The PPF is a significant funding source for a range of organisations in the legal ecosystem, including (amongst others) Victoria Legal Aid (**VLA**), the Victoria Law Foundation and the Victorian Law Reform Commission. We also administer a grants program that provides significant funding into the community legal sector to support access to justice. In addition, the Board also funds the Law Institute of Victoria (**LIV**) and the Bar to assist them with continuing professional development programs for solicitors and barristers.

In 2022, we funded the LIV to scope the development of a cultural capability framework, in collaboration with VLA. The Board is committed to continuing to fund the development of a comprehensive program of work to improve the capacity of lawyers to provide culturally safe legal services, and to improve access to justice, for First Nations clients. It is critical to its success that this work is First-Nations led and informed, and we intend to take the time required to ensure that it is so. At this stage, we envisage this work will include development of a cultural capability framework, underpinned by training products tailored to the needs of specific cohorts of lawyers, including fundamental baseline education applicable to all Victorian lawyers on the impact of the colonial justice system on First Nations people, from colonisation through to the present day. We will provide updates to the Coroner's Court as this program of work progresses.

CPD auditing activities

While we do not have the power to mandate particular CPD activities (beyond that described above), we do have the power to enforce compliance with the existing CPD requirements. We have delegated to the Bar and the LIV responsibility for CPD compliance audits for their respective branches of the profession. When a lawyer is selected for an audit, they have 21 days to verify to the Bar or the LIV that they have met their CPD obligations, through provision of supporting documentation.

We will strongly encourage the Victorian legal profession as a whole to undertake First Nations cultural capability training. We will explore, with the LIV and the Bar, implementing a direction to undertake targeted audits of particular cohorts of lawyers (for example, criminal lawyers, or lawyers working in communities with a high proportion of First Nations people) to identify whether those who are likely to work with First Nations clients have undertaken suitable cultural capability training. This will be a useful way of monitoring the

¹ Note that recommendation 85 of the [Royal Commission into the Management of Police Informants](#) was to give VLSBC the same power to regulate solicitors' CPD as it has for barristers, either through an amendment to the Uniform Law framework or alternatively the Victorian standalone legislation. The implementation approach to this recommendation is still being considered by the Government.

² The PPF receives income from the interest generated on money held in lawyers' trust accounts, in addition to investment returns, the annual licensing fees paid by lawyers and any fines imposed on lawyers following disciplinary action taken against them in the court.

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effectiveness of our communications activities (see below) and will inform the development of new approaches to encourage greater uptake. Early career barristers, who will be mandated to undertake First Nations cultural capability training, will be provided an opportunity to rectify their omission if they are identified through an audit as not having complied with their obligations.

Communications to the profession

As the regulator of the legal profession in Victoria, we have a broad communications reach across the sector. I communicate regularly with the profession through bimonthly Commissioner Update emails to the approximately 26,000 lawyers who hold a current Victorian practising certificate. This channel is an effective means of communicating with lawyers, including in relation to legal practise risks and standards, and in addition, to alert the sector to resources available to support their professional development.

Commissioner-initiated complaint into Counsel who represented Ms Nelson

As per my previous correspondence with your office (your reference COR 2020 0021, our reference COM-2023-0065) I confirm that I have initiated a complaint and investigation of my own motion as Commissioner into the conduct of lawyer Tass Antos, following the finding by Coroner McGregor that the legal services he provided to Ms Nelson were inadequate. I will inform the Coroner of the outcome of this investigation when it is finalised.

Concluding remarks

On behalf of the Board, and my staff, I reiterate our commitment to using our regulatory powers and funding mechanisms to improve First Nations people's experience of the justice system through supporting the legal profession to improve the cultural safety and standard of legal services provided by lawyers to First Nations people.

I thank Coroner McGregor for his recommendation and look forward to providing updates on our progress towards implementation as the various elements of our response progress.

Please do not hesitate to contact my office if you would like to discuss this response in greater detail. The responsible person in my office for this work is Kerri-anne Millard, Director, Policy and Outreach. Kerri-anne can be contacted by email on: [REDACTED] or on [REDACTED].

Yours faithfully



Fiona McLeay
Board CEO & Commissioner

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