

# The Legal Services Board

## Alternative Business Structures: what's next?

The Intellectual Property Regulation Board

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# Agenda

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- Regulatory Objectives and vision
- The challenge
- Changes in regulation
- Alternative Business Structures
- Next Steps

# Regulatory Objectives and Vision

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## Shared with the Approved Regulators, the Regulatory Objectives:

- Protect and promote the public interest
- Support the constitutional principle of the rule of law
- Improve access to justice
- Protect and promote the interest of consumers
- Promote competition in the provision of legal services
- Encourage an independent, strong, diverse and effective legal profession
- Increase public understanding of the citizen's legal rights and duties
- Promote and maintain adherence to the professional principles

# Regulatory Objectives and Vision

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## The vision for the sector:

- Greater competition and the development of new and innovative ways of meeting demand, with relaxed ownership rules allowing Alternative Business Structures
- A market that allows access to justice for all consumers, helping those whose incomes exceed legal aid thresholds but who need support
- Better empowered consumers, receiving the right quality of service at the right price
- An improved customer experience with effective redress if things go wrong
- Greater innovation and partnership between lawyers and other professionals

# The challenge

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- The **external environment has changed**
  - New technology
  - Changed consumer expectations – corporate and individual consumers
- The legal regulatory framework **needs to catch up** to
  - Enable legal services providers commercial flexibility
  - Remove unnecessary restrictions and perverse incentives
  - Ensure that essential consumer protection is maintained
  - Ensure that incentives for best consumer practice are enhanced

## The challenge

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- Business excellence and creativity as important as legal excellence
- Regulatory framework needs to catch up to:
  - Enable the legal services industry to respond in business time
  - Ensure that essential consumer protection is maintained
  - Provide incentives so that best consumer practice is embedded

## Changes in regulation

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- Act commits the LSB and ARs to the principles that regulation should be:

**Proportionate:** Regulators should only intervene when necessary. Remedies should be appropriate to risk posed, and costs identified and minimised.

**Accountable:** Regulators must be able to justify decisions, and be subject to public scrutiny.

**Consistent:** Government rules and standards must be joined up and implemented fairly.

**Transparent:** Regulators should be open, and keep regulations simple and user friendly.

**Targeted:** Regulation should be focused on the problem, and minimise side effects.

- Proportionality means we will identify outcomes, but rarely means prescriptive rules
- This demands greater maturity in the assessment and management of risk

# Changes in regulation

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- **Moves towards more outcome-focussed regulatory regime** can deliver:
  - scope for better outcomes for consumers;
  - better understanding of standards amongst practitioners;
  - more opportunities to apply experience from other sectors;
- Shift from individual towards **entity-based regulation**
- ABS can be precursor for **more responsive regulation** generally

## Alternative Business Structures

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- **ABS** – structural changes with removal of restrictions (where they exist) on:
  - lawyers and non-lawyers practising together
  - non-lawyer ownership
  - external investment
  
- **Timeline announced** in March 2010:
  - Prospective ABS can apply for licence from mid 2011
  - Open for trading from October 2011

# Alternative Business Structures

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- This may be your business now
  - ABS – all will need a licence from a Licensing Authority (an AR)
  - If you have this structure and you are carrying out a reserved legal activity
- Licensing rules (approved by LSB) govern ABS behaviour

# Alternative Business Structures

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- **Key test for all ABS:**
  - Fitness to own test (owner and “associates”)
    - Regulatory objectives are not compromised
    - Managers and employees are protected from improper influence
    - Probity – criminal convictions, disqualification, bankruptcy etc
- **Minimum standards of protection between ABS and non-ABS** – level playing field and consistent consumer protections;

# Alternative Business Structures

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- **Every ABS must have:**
  - Head of Legal Practice (HoLP) lawyer - compliance with licence
  - Head of Finance and Administration (HoFA)
    - compliance with accounts rules
- These can be the same person
- Many businesses already have these roles in place

## What next?

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- Implementation plan for delivery in mid 2011
- SRA and CLC will apply to be Licensing Authorities (LAs)
  - Both bodies consulting soon on approach
  - Funded by licence application fee and annual fee
- Transitional arrangements for entities that are currently 'ABS-like'
  - Up to 6 October 2012 – following which, they must become licensed
- IPReg could apply to become a LA

## What next?

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- Regulation is catching up fast with the changing market
- Liberalisation presents opportunities... and challenges
- The market will respond – whether you decide to play or not