

The Australian Government - Productivity Commission Access to Justice Arrangement.

Submission to the Commission:

Dear Commissioner(s),

Please accept the following as my personal submission to your inquiry. I have been involved in extensive legal actions in various roles and principally defending myself in actions against a Government Agency.

I have spent in excess of \$ 1,000,000 in legal fees and have never had a satisfactory result. As the lead applicant (plaintiff) in a Class Action in Victoria against the Mobil Oil Company (2000) it cost me \$ 550,000 in legal fees just to satisfy the Court that such an action was legal in Victoria. No mention of the actual subject matter of the action up to this point, just the State allowing an individual to pay for interpretation of a specific Law.

The reason for this explanation in view of my submission is the ridiculous state of an "industry" THE LEGAL PROFESSION. Or should I say the legal mafia.

No doubt you will have had legal training (bias) yourselves as have 70% of politicians who pass legislation not to mention the whole host of bureaucrats either qualified or bush lawyers.

This brings me to my first point; little of our legislation is written in a straight forward manner allowing easy practical interpretation by lay people. Such interpretation requires hundredfold time expenditure at a 6 minute billing rate. Refer my example above.

My second point is the Adversarial system versus the truth seeking Inquisitorial. The first is the clever promotion of work as the arguments presented in almost any case ensure the prolonged proceedings clogging the present system. Having witnessed many proceedings it continues to amaze that the lawyers participating continue to be reprimanded by the Judge as to allowable statements or the rejection of evidence as irrelevant. All this time the meter keeps ticking away!!

My third point is in relation to the self represented (usually defendant) who having a clear cut case is drowned by a system manipulated for that purpose by lawyers and sanction by most judges. The subject matter of a case becomes irrelevant and the process of fighting by using convoluted process or precedence rules the day. No wonder the statement; "a person who defends himself has a fool for a client" He is only a fool because he dares enter a sacred realm of mystic rules which are interpreted differently on each specific occasion.

The fourth point is the non use of Alternative Dispute Resolution (ADR). Although part of all Commonwealth instructions, to Departments and Agencies, as are the Model Litigant Directions (MLD) these are rarely applied. In the first instance there would be insufficient work for the legal profession as such procedures would be carried out at a more mature level based on the actual subject matter of the case. In the matter of the MLD, simply refer to the report to the current Attorney General by the Rule of Law Institute, to see the lack of support, the directions being used only on the odd occasion where an agency is forced to by a knowledgeable self represented. Strangely such cases are not reported as required. Yes there are provisions for the application of these Directions et al, but the agencies involved appear to have adequate control at the level of Ombudsman and Attorney General to control any effective action. It should be further noted that the extent of "incestuous" relationships between Government Bureaucrats due the migration between Departments affects all interaction. I again speak from personal experience.

The fifth point is that of Legal Assistance Insurance. Having had such a policy, but fortunately never having had the need to use it whilst working overseas. I can certainly recommend it for peace of mind. As the reference below points out in detail the positive result for all parties, except lawyers, it will never work in Australia because of the ingrained (legal) culture, unless the system became one like Medicare or a compulsory one.

http://riad-online.eu/fileadmin/documents/homepage/events/past_events/Paris/Moerland_en.pdf

In summary, as long as lawyers control and Australia has the Adversarial Legal System this problem of (in) Access to Justice will persist. Considering that the system is conducted by lawyers at all levels, including perhaps this inquiry, there is little hope for improvement. What is the incentive to reduce such a lucrative profession to the level it was historically intended as an "advocacy". Strangely the "silk's" gown still makes provision for a donation a legacy of original intent of advocacy.

Although not having addressed each specific point as per your terms of reference, I trust the above information and opinions add some value to a genuine appraisal of a sorry state of affairs.

Yours faithfully,

Stan van de Wiel (Capt)

Additional reference material: <http://proaviation.com.au/2013/08/07/shooting-the-messenger-an-analysis/>