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PRODUCTIVITY COMMISSION
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Dear Sir/Madam

Submission on ACCESS TO JUSTICE

I write as an academic who works in two major areas of the civil justice system and who has recently completed a project on costs in family provision (*Bleak House revisited? disproportionality in family provision estate litigation in NSW and Vic, Australasian Institute of Judicial Administration Incorporated*) and am currently doing a project on the running out of compensation payouts in relation to social security.

Briefly I wish to point out some significant issues arising for people wishing to access the civil justice system:

1. In many cases there is now a requirement for mediation to be carried out before a case is heard in court. This has good intentions since it is supposed to reduce the likelihood of litigation and reduce the expense of that litigation. However, in Sydney it is common for this mediation to cost in the vicinity of \$15-20,000. **This is one-quarter of the average NSW salary** which may be spent on one day's mediation. Regulating the cost of mediation is essential.
2. In my view mediation needs to be done early and done properly in that it balances out the power of the two parties making a new decision properly. It is not easy and is highly skilled, but at present a great deal of mediation is of doubtful value and appears to be far more destructive than it should be.
3. The cost of lawyers is currently prohibitive even for people like me who make a salary of above \$140,000. When someone like me won't go to a lawyer there is something wrong. Legal aid is almost non-existent for civil matters, but people can be pulled into a civil case as a defendant and have to fight it. A

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visit to many solicitors in Sydney costs \$400-600 per hour. The market does not seem to be able to fix this.

4. When a court awards costs against a party or even where a court says each party has to pay their own costs, what they regard as the costs are often only a small proportion of what is actually to be paid. In the family provision examples I looked at one case was said to have prohibitive costs of around 600,000 of an estate worth somewhat less than \$1 million. The actual costs to be paid were more than a million dollars and the estate is now bankrupt.
5. It would seem that the legal profession may be pricing itself out of the market, in that a very large part of the middle class finds fees far too large to contemplate and they then do things like write their own wills which in turn causes more problems and often drives up costs more. (The case, *Estate of Whiteley, in NSW Supreme Court* was a case where the fees charged for a family law case were so high that the testator decided to write his own will and ultimately a great deal of litigation ensued).
6. Lawyers costs agreements and contingent fee agreements do not seem to be helping in the area of personal injury law. First, although the costs agreements are given to clients it appears that they often do not understand them. They often do not understand what 'disbursements' means, nor do they understand how much of a compensation payment will disappear – this seems to commonly be between 20-40% of a compensation award. Further, as approximately 90% of compensation payments are settlements, clients may have very little understanding of how the cost agreement fits in with the amount they ultimately receive.
7. I apologise for the wordiness of this submission. I did not have time to make it shorter.

Yours sincerely,

PRUE VINES