



**CITY OF SYDNEY
LAW SOCIETY**

ABN 88 377 230 477

A Regional Society of
The Law Society of New South Wales

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21 November 2013

Presiding Commissioner Warren Mundy
and
Commissioner Angela McRae
Productivity Commission
GPO Box 1428
CANBERRA ACT 2601

Dear Commissioners

RE: INQUIRY INTO ACCESS TO JUSTICE ARRANGEMENTS

We are writing to you on behalf of the Management Committee of City of Sydney Law Society (CSLS).

We are aware that the Law Council of Australia has made detailed submissions to the Productivity Commission regarding this inquiry which have been based on comments received from its constituent bodies (including the Law Society of NSW).

Given the level of detail in those submissions we will keep our submissions in this letter relatively brief. Rather than cutting across those submissions we would like to supplement them in response to certain aspects of the Commission's Issues Paper.

City of Sydney Law Society

Our Society is a regional society of the Law Society of New South Wales. Our members are predominantly solicitors practising in the central business district of Sydney. However, barristers, academics and students are also represented amongst our ranks. There are

more than 12,000 solicitors practising in the CCLS region which constitutes approximately 45 per cent of the 26,700 solicitors currently practicing throughout NSW.

We provide our members with opportunities to meet regularly to discuss issues of importance to them. We undertake mandatory continuing legal education courses, mostly by way of seminars which are free to our members.

Our Society also provides opportunities for the bench and the bar to meet members. We represent our members to the Law Society of New South Wales, the lawyer's professional indemnity insurer, LawCover and, where appropriate to government and to the public. We support wherever possible the aims and the activities of the Law Society of New South Wales.

Small to Medium Sized Legal Practices

The solicitor members of our Society are mainly from small to medium sized practices. It is a little known fact that this sector of the legal profession is the majority of the profession.

As an illustration of this in annexure A we have included a table setting out statistics for solicitors in practice as at 1 November 2013 in New South Wales broken up by the size of legal practice in which they work. From the table it can be seen that presently in our state 87.3 per cent of the firms are sole practitioners and another 12.44 per cent of firms with 2 to 20 solicitors.

We are aware that the Commission's focus is Australia-wide rather than being restricted any particular state. However it is our understanding that this general statistical pattern holds true on a nation-wide basis also.

Another fact that is little known is that many of the solicitor firms in this category face substantial challenges in operating their businesses. Although there are relatively few reliable statistics on this topic anecdotal evidence suggests that there are many solicitor firms making a net income of less than \$50,000 per year. At annexure B there is a copy of an article that sets this out in more detail.

In order to help address this situation our Society has established a Practice Viability Sub-committee to improve the external business environment of small to medium sized practices. One of the activities of this sub-committee has been to hold a Pre-Election Small Business Forum on 29 August 2013 which is explained in more detail on the flyer enclosed as annexure C.

Access to Justice – Traditional Approaches

Discussions surrounding the topic of Access to Justice have traditionally given much emphasis to the question of the levels of legal aid funding provided by the both State and Federal Governments. Despite much resistance by the relevant Legal Aid and welfare constituencies the levels of legal aid funding have declined substantially over time.

Our Society supports increases in Legal Aid funding to meet the needs of genuinely low income members of the community. However this leaves unanswered what is to happen

about the so called 'in betweeners' who do not qualify for legal aid, but do not have the cash at hand to pay for legal services. Some estimates put the figure for this group at around 85 per cent of the population. Consequently, even on the most optimistic of future projections it is not realistic to think that this group will ever be catered for by legal aid funding from the government purse.

The traditional approach to Access to Justice has also frequently resulted in various cuts in expenditure, removal of rights of representation and increasing restrictions on what can be charged by lawyers to their clients.

In many cases this has resulted in worsening the situation for both the public and lawyers. For example, in NSW the regime regulating lawyers' fees in relation to victims of crime compensation has with each round of new regulations restricted solicitors fees more and more. This has reached the point where following the last round of cuts in May 2013 many lawyers have simply been forced to stop doing this work. This has left many members of the public with less and less opportunities for representation.

Private Funding – Fresh Approaches

Our Society submits that the current crises in Access to Justice calls for fresh approaches to address the legal needs of the in betweeners that make up so much of the population. Those approaches should include growing the role of the private sector in the funding of legal services.

Rather than viewing access to justice for the in-betweeners in terms of a lack of resources we submit that in most cases the fundamental problem is one of lack of organisation. Many of the in-betweeners are not without significant incomes and enjoy a relatively good standard of living that may well include international travel and private school education for their children. But they frequently have their budget fully committed in advance therefore resulting in an unavailability of liquid funds when the need for a lawyer arises.

Section 13 of the Issues Paper calls for input in relation to some approaches to funding for litigation. Certainly contingent billing, litigation funding and class actions are all worth considering for support as ways forward to find private sector or contractual solutions to the needs of the in-betweeners. But so far these approaches have yet made inroads into the funding of 'garden variety' civil litigation by private citizens and / or small to medium sized businesses that involve disputes over, say, up to \$100,000 in value. The question that remains to be answered for these approaches is how they can be modified to cater more for this sector of the market.

Legal Expense Insurance

There are a number of overseas jurisdictions, principally the US, UK and continental Europe, where the insurance industry has for some time been far more involved in the funding of legal expenses than in Australia. Although this form of insurance goes by many different names the main names used are 'Legal Expense Insurance' (UK & Europe) or Pre-paid Legal Insurance (US).

Our Society does not propose to go into a detailed discussion here of these insurance arrangements except to say that our survey of the literature suggests that the

overseas experience appears to have been positive, if not without some challenges. In this regard we refer you to excellent discussion of some of the key features of legal expense insurance on pages 132 to 134 of the Law Council's submission to this inquiry.

We concur with the Law Council's suggestion for the Productivity Commission to consult with the Insurance Council of Australia and major insurers in relation to developing this approach to improving access to justice through increasing the availability of legal expense insurance and related insurance products for the Australian market.

The Way Forward

Our Society would like to see new approaches developed that will better meet the needs of both consumers and practitioners. The traditional imbalance and current trends in Access to Justice arrangements need to be rectified and, in our submission, the private sector could play a key role through the adoption and further development of the approaches mentioned above.

Should you or anyone else from the Commission wish to ask further questions please contact us at the relevant time of your inquiry.

Yours faithfully,

Stephen Bell
President
City of Sydney Law Society

Phillip C Roberts
Coordinator, Practice Viability Subcommittee
City of Sydney Law Society

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Table 4: Profile of Private Practice ⁴	Firms		Solicitors Working in Firms	
	No.	%	No.	%
Sole Practitioner	4673	87.30	7290	41.87
2 to 4	570	10.65	3129	17.97
5 to 10	63	1.18	1230	7.06
11 to 20	21	0.39	1043	5.99
21 to 39	12	0.22	1156	6.64
40 or more	14	0.26	3564	20.47
Total	5353	100.00	17412	100.00

The Law Society of New South Wales, Profile, Sydney
 Research Update, Statistics as at 1 November 2013, p.2, Table 4

Small firms under threat

THE increasing cost pressures of running a practice and the globalisation of the Australian legal market will mean less small firms in the future, a leading legal consultant has claimed.

Legal consultant Ted Dwyer spoke to *Lawyers Weekly* about what he sees as the inevitable consolidation of the small law firm market as regulation and business demands erode the ability of lawyers at small firms to concentrate on the practise of law.

"When you are running a sole practice, you have high overheads relative to other businesses, particularly around professional indemnity insurance and the like," said Dwyer.

"To be constantly having to comply with an increasing tide of regulation actually makes things a hell of a lot harder."

Earlier this month Thomson Reuters released a survey that showed that two thirds of the 201 small law firm respondents (firms with one to 10 fee earners) did not convert leads due to the challenge of balancing fee-earning

work with business development.

The survey also showed that for firms with one to 10 fee earners only 22 per cent had a dedicated business development manager, compared with 86 per cent of law firms with 20 or more fee earners in a similar Thomson Reuters survey.

Dwyer said that in the course of his work he often provides business training to lawyers at large law firms, frequently at the graduate level.

New South Wales alone has more than 5000 law firms, and more than 85 per cent of those are sole practitioners. Dwyer said that with the value of the market in which small firms operate contracting, it was inevitable that some of these firms would fold.

"There are some small firms and sole practitioners that dominate and are doing very well and that means the others really are suffering," he said. "My estimate is that the average sole practitioner in a rural area is working six days a week and earning less than \$70,000 a year."

Not all bad

While Dwyer bemoans the regulatory burdens placed on small law firms, he said that consolidation of this end of the market would not leave the profession or society as a whole in a more vulnerable state.

"I think it will improve things," said Dwyer of the prospect of less sole practitioners and small firms. "The evidence to me shows that once you get more professional in offering legal services the vast majority of firms will offer them in a way which resonates well with clients and consumers."

Dwyer added that it was "innovative firms like Salvos Legal" that provided a viable business model for law firms looking to act for "the have-nots".

The Thomson Reuters survey also found that 36 per cent of small firm practitioners spent up to 10 hours a week managing IT, HR, marketing and business research responsibilities, with 14 per cent of respondents spending up to three days a week (up to 24 hours) on these roles.

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City of Sydney Law Society (CSLS)
Small Business Forum

Speakers:



Mr Bernie Ripoll
*Parliamentary Secretary for Small
Business, MP, Federal Member for
Oxley*



Senator Scott Ryan
*Shadow Parliamentary Secretary for
Small Business and Fair Competition,
Liberal Senator for Victoria*



Mr Paul Orton
*Director, Policy and Advocacy at NSW
Business Chamber*

***Yours is a Small Business –
Let Your Voice be Heard at the
Federal Election***

This event is an opportunity for the audience to hear representatives of the major political parties and other influential figures discuss what are the best policies to be adopted in relation to small business, including small legal practices, by whichever side of politics forms government after the next Federal Election.

When: Thursday, 29 August 2013

Time: 5:30pm – 7:00pm

Where: Commercial Travellers & Business Club, Lower Ground Floor, MLC Centre, Martin Place, Sydney.

Speakers: **Mr Bernie Ripoll**
Parliamentary Secretary for Small Business, MP, Federal Member for Oxley
Senator Scott Ryan
Shadow Parliamentary Secretary for Small Business and Fair Competition, Liberal Senator for Victoria
Mr Paul Orton
Director, Policy and Advocacy at NSW Business Chamber

Facilitator: **Phillip Roberts**, Coordinator – Practice Viability Sub-Committee, City of Sydney Law Society

-BOOK NOW SEATS ARE LIMITED-

Seminar Cost:

CSLS Members: Free

NSW Law Society Members : \$25 incl GST

Non Members: \$35 incl GST

For registration form please contact:

Ann Parisi
Executive Officer, City of Sydney Law Society
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INFORMAL DINNER GATHERING AFTER THE SEMINAR
(AT OWN COST – SEPARATE TO SEMINAR COST)

Emperor's Choice Restaurant
147B King Street (Cnr Elizabeth Street) Sydney