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T/AS Salvos Legal Humanitarian
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Access to Justice Arrangements
Productivity Commission
LB2 Collins, Street East
MELBOURNE VIC 8003

ACCESS TO JUSTICE

I would be grateful if the following matters could be brought to the attention of the Commissioners, for their consideration.

A brief introduction

Salvos Legal is a revolutionary law firm.

We practice in the areas of commercial and property transactional law on a paid basis. However, all of our fees (net of expenses) are used to fund the operations of our 'legal aid' sister firm, Salvos Legal Humanitarian, which is a full service free law firm for the disadvantaged and marginalised in NSW and Queensland. Both firms are solely owned by The Salvation Army.

Our partners are specialists in commercial and property law, having worked in national/top tier firms and/or in-house legal departments. Our target markets are property and commercial transactional work for the corporate, government and not-for-profit/church group sectors. We are rapidly growing, and already enjoy having institutional clients such as the Commonwealth Bank of Australia (CBA), Transport for NSW and Community Sector Banking, the NSW Office of the Small Business Commissioner, the Commonwealth Department of Defence and many others. We of course also act for The Salvation Army.

Our official launch was at NSW Parliament House on 27 July 2011. The NSW Attorney-General and Minister for Justice, the Honourable Greg Smith SC MP, was the host. Our launch was attended by approximately 200 guests, including the Chief Justice of the Supreme Court of NSW.

Salvos Legal Humanitarian, and its predecessor, Courtyard Legal, have so far advised and assisted in over 8,650 cases (as at 27 November 2013) entirely for free for people in need, without any State or Federal Government funding (other than in their capacities as commercial clients of ours, of course). We also do not receive funding from The Salvation Army. The Humanitarian work is done in the areas of criminal law, family & children's law, debt, housing, Centrelink and migration / refugee law.

As Salvos Legal is a not-for-profit practice, no distributions of dividends are made otherwise than for the funding of the work of Salvos Legal Humanitarian. In this regard, Salvos Legal is a recognised

Charitable Institution, and Salvos Legal Humanitarian is a recognised Public Benevolent Institution (PBI) which holds Deductible Gift Recipient (DGR) status.

All of the work done by Salvos Legal Humanitarian is made possible only by the revenue generated through the commercial legal work done by Salvos Legal. We are a social enterprise and have been entirely self-sustaining since October 2012. The work presently funds over 200 free Humanitarian cases each week, employing 26 people (18 lawyers plus support staff) and having over 150 volunteer solicitors, migration agents and paralegals, spanning 10 offices in NSW & QLD.

Regulatory Barriers to Access to Justice

I see a number of barriers to accessing justice for individuals, each of which could be overcome simply and would constitute 'quick wins' of not insignificant impact.

I will make each of my few points briefly. If any of them are of interest to the Commissioners, I would be pleased to elaborate in conference or in writing, as convenient.

Regulation of the migration profession

A copy of a submission provided by me through Courtyard Legal (the firm which preceded Salvos Legal) can be found here: http://www.pc.gov.au/_data/assets/pdf_file/0005/99590/subdr029.pdf. I repeat that submission in respect of the dual regulation of the migration profession, as an unnecessary and highly problematic burden.

Costs

Landmark cases can have a massive multiplier effect on providing justice to many individuals through a change in law or a change in how a law is interpreted / enforced. Where they occur successfully, justice is achieved incredibly cheaply when considered proportionately across the number of individuals affected.

For obvious reasons, the threat of costs orders discourages public interest litigation. This barrier can be overcome (especially when the litigation is against government and statutory corporations), either through policy positions (e.g. in a change to Legal Services Directions or the model litigant policy) or through rules of Court which allow a party commencing an action to seek a determination at the outset that the proceedings will not involve a costs liability by establishing to the Court the public interest nature of the case. The ever present threat of an adverse costs order will either prevent proceedings being taken in the first place, or as proceedings continue will act as a pressure to compromise the action before a final determination.

Government Procurement

Enclosed is a copy of the paper on social procurement which I was referring to. My full legal advice is contained as an appendix. The Commonwealth Govt. has embraced social procurement in a legal context, to an extent through the focus on pro bono reporting as part of the Legal Services Multi-Use List. This could be enhanced by requiring agencies accessing the LSMUL to deliberately allocate a specific (and not token) percentage to pro bono in tender weighting categories. Department of Veterans Affairs undertook this as part of its recent tender for legal services but this does not appear to be standard in Cth agencies seeking legal services at present.

Quite simply, all Commonwealth, State and Local Government agencies should embrace social procurement in the purchase of legal services. It is the most effective way of encouraging the private legal profession to do pro bono, thereby assisting the communities which the various governments operate in. Anecdotally, I understand that Rob Hulls, when he was Victorian Attorney-General, required this of legal service providers serving the State of Victoria and saw an immediate increase in pro bono work being undertaken, as the market responded to the client's call for attention to that 'value add'.

Volunteer Practising Certificates

There is no shortage of willing and qualified volunteers amongst the legal profession. Many however who want to volunteer and who are not currently employed, cannot financially justify the cost of a practising certificate (especially if the only legal practice they undertake is a casual / part-time role as a volunteer solicitor in a clinic). QLD has a volunteer practising certificate regime. It works superbly. NSW does not have one. I don't know about other States or the Territories. This, combined with the lifting of restrictions on government and in-house practising certificates should be addressed immediately to allow these ready and willing volunteers to be eligible to serve people in need in the proper capacity.

Incentives for Pro bono work

The private profession, largely consisting of sole practitioners or small law firms, has many competing business expenses.

Costs of practising certificates, professional indemnity insurance and CLE attendance all affect the business case of a small / sole practice. By ignoring the realities of commercial practice, we will fail to tap into this massive pool of lawyers who want to help with pro bono work but simply cannot have it affect their ability to survive as a small business.

Incentives for taking on pro bono cases should be made available to the small firm / sole practice private profession by lifting some of those costs (either through provision of free certificates and CLE by Law Societies and/ or a rebate fund to allow firms to earn 'cash back' on payments made for their professional indemnity insurance costs).

I would be pleased to expand upon any of these points in further discussions at any time, if I can be of assistance.

Yours faithfully

**LUKE GEARY
PARTNER**

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