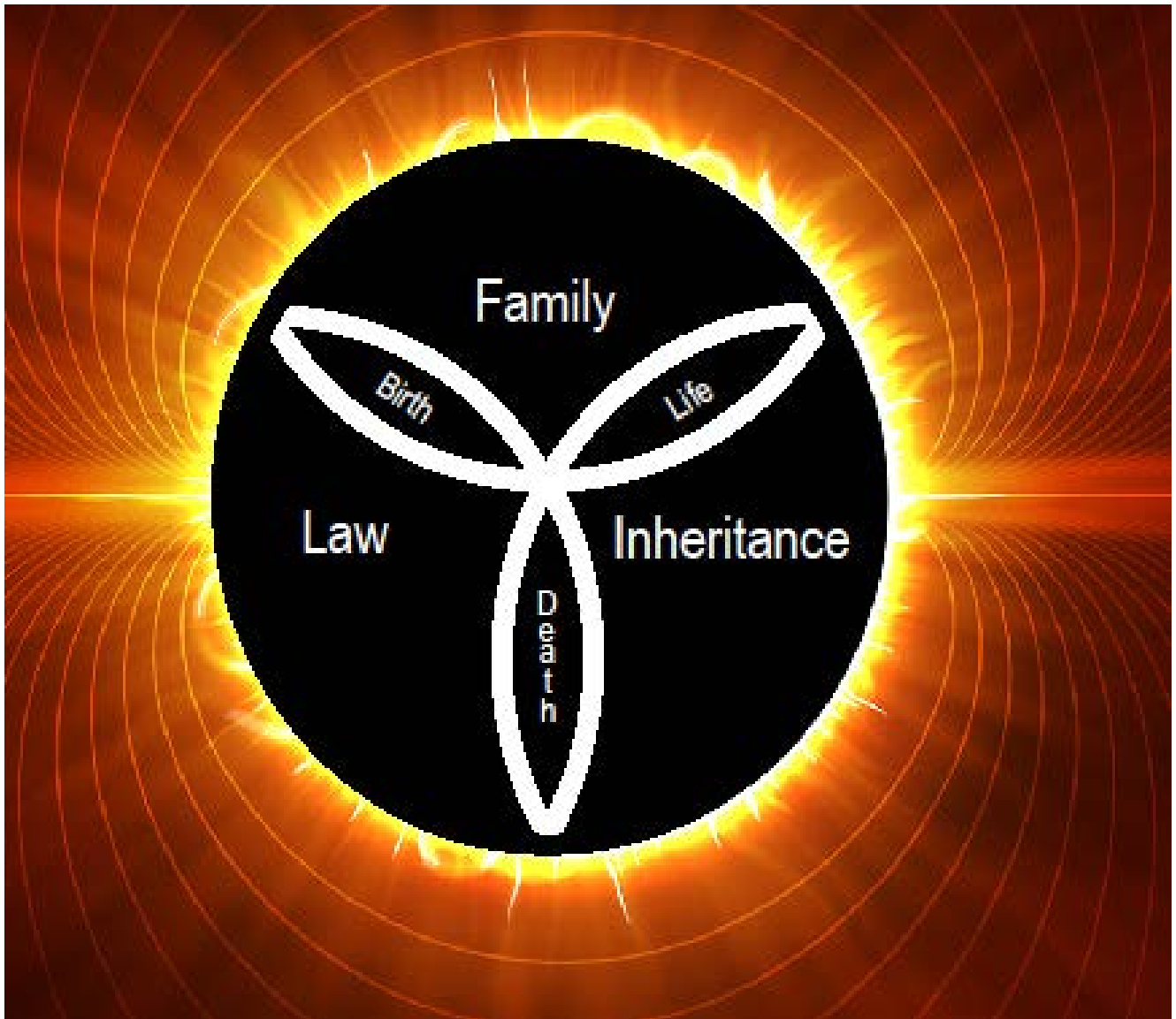


Submission by Diarmuid Hannigan

29th of December 2013

Access to Justice Arrangements



Preface

Access to Justice?

A plethora of confusion built up over many years buy the legal profession to create confusion.

I have based my submission on inheritance law because:

- Death is a point in life that is specific to family and impacts upon every Australian family.
- The way we deal with inheritance distribution from a legal sense exposes many of the cultural failings of our legal system.
- Inheritance law is a relatively neutral area of law as the inheritors (more often than not family members bear no fault in the process)
- From my own experience I have learned that lawyers practicing in this area of law have no standards and remain unaccountable to family members of the deceased.
- I have also discovered that the complaints process has been corrupted by the legal profession because all consumer complaints against lawyers are referred to Legal Services Commissioners who operate under legal Professional Acts in each state. These acts turn consumers into clients. Under these acts clients no longer have consumer rights.
- This manipulation by the legal profession has denied the Australian Consumer and the legal industry the ability to enjoy a service supported by standards and accountability which is the case in all other industries that provide goods or services to Australian Consumers.
- This has led to Australians being encumbered by a legal industry that is expensive time consuming and terribly inefficient, an industry that benefits from this process at the expense of Australian families.
- The reason this has occurred is because law reform is monopolised by the legal fraternity and for Australia to change from its past roots this process of law reform must be dominated by members of our community who are consumers of legal services with the advice of lawyers instead of lawyers running the law reform process.
- I trust my submission will be helpful as many of the issues I have addressed flow into the areas of debt, divorce and disability law which apart from death is where the legal profession obtain the majority of their revenue.

If you require any further information please contact me and thank you for the opportunity.

Yours Sincerely

Diarmuid Hannigan

What to do.

1. When reforming inheritance law the interests of Australian Family development are put to the forefront by providing the appropriate funding to family interest groups. This will ensure a dominance of family representation over the legal profession's representation during the law reform process.
2. Investigate the implementation of a cheaper, faster and more accurate truth seeking system to service the needs of families who are caught up in inheritance disagreements and set up low cost tribunals.
3. Cap the legal costs on an inheritance dispute to no more than 5% of the value of the estate and ensure the legal costs represent value for money to Australian families.
4. Ensure that lawyers who are acting as executors no longer engage in misleading and deceptive conduct under the Trade Practices Act of 1974 by altering the anomaly within the Legal Professional Act 2004 and make lawyers, when they are acting as executors, accountable under the Act.
5. Make lawyers who are working in inheritance law work to a set of standards that are written with the purpose of ensuring that the lawyer or lawyers are always acting in the best interests of Australian families.
6. Legislate so as lawyers who are working in inheritance law have to complete a minimum amount of mandatory training in the impact of inheritance upon families and their intergenerational development.
7. Make all lawyers and the judiciaries who are working in inheritance matters observe the International Charter of Human Rights with respect to family development so as a persons right to inherit is honoured as a human right under Australian law.
8. If there are corporate discrepancies within the business dealings of the deceased make sure the corporate regulator ASIC has the legal power and resources to investigate and obtain any relevant information for the family of the deceased without having to resort to the expensive civil process of litigation. In other words make sure that the beneficiaries can call on the services of a policeman instead of having to rely on a lawyer at \$500 per hour.
9. Create a transparent system for the process of inheritance so as lawyers and lawyer executors are not permitted to hide any information that will assist Australian families to determine the wishes of a relative who has died. Mandate an open and transparent system where information is freely exchanged in order to overcome any disagreements. Make it a criminal offence when any person whether it is a lawyer who is an executor or any other executor that is paid hides any document that will assist a family in determining the wishes of the dead and give the police powers to investigate and issue criminal proceedings if required.
10. Create laws so as a lawyer and their law firm who is an executor cannot empower themselves over a family by legal thuggery.
11. When lawyers who are executors engage in dishonest conduct ensure:
 - The regulator: The Victorian Legal Service Commissioner has the power to investigate any allegations and that those investigations are carried out in an open and transparent manner so as that all parties can view the correspondence.
 - If the regulator discovers any impropriety bring in legislation so as criminal prosecution can occur.

12. Make lawyers who are executors who cause any financial loss to beneficiaries through mismanagement and dishonest conduct such as lying, pay the beneficiaries for those losses with an extra amount for psychological pain and suffering included.
13. Ensure that lawyers who are performing the role of executors carry compulsory insurance so as any financial damage they cause to the inheritance of the beneficiaries is paid for and that they cannot obfuscate their responsibilities to their victims as has occurred in N S W by Russell Keddie and his action of declaring himself bankrupt to avoid repaying his victims who were claimants of personal injury and who he grossly overcharged.
14. Make sure that the Regulator of lawyers who are acting as executors or who are acting in inheritance matters is an independent regulator, unlike the current legal regulator who is a self-regulator for the legal profession.

Introduction

I regret having to write what I have had to write but I do not regret a single word I have written for it is the truth. I have written this submission so as no other family is devastated by the legal profession in the same way as my mother's family was after her death. I have presented you with a symbol which encompasses our social structure in regards to inheritance. Each word is symbolic to the way our society functions and is influenced by the way we shape our inheritance laws.

Since the reforms carried out in Victoria and N S W to our inheritance laws will have a major bearing upon the way inheritance is dealt with within all Australian jurisdictions for many years to come.

I felt it essential to clearly reveal that the current succession laws of Australia are working against the interests of Australian families; as they have been shaped by the legal profession over many centuries. These laws favour the profession over families, as can be seen by reading my story.

These laws:

- are very expensive to administer
- take a long time to implement
- benefit the income of the legal profession
- erode the value of family inheritance.

The problems I have identified are not addressed in the current Inheritance Acts of Victoria or N S W, as they relate to the actions of the legal profession whilst carrying out their work in succession law and are not currently covered by the respective acts. These acts were created in a time before the reality of Alvin Toffler's Future Shock became a reality. In a time when lawyers were part of communities and went to church on Sundays, a time when greed was still contained, unfortunately the world has changed and the financial demands upon the legal profession can be onerous and lead to the exploitation of vulnerable Australian families by unaccountable self-serving lawyers.

Since Inheritance has a significant impact upon family development within Australia, I have specified the current failings within the law and have recommended solutions to address those failings.

Review Inheritance Laws: Summary.

The review of our Inheritance Laws will be very important for all Australian families and will have significant implications on how our laws are administered and practiced in the future. This review will benchmark other reviews of inheritance law in every state and territory within Australia.

The current process of Inheritance law within Australia has serious flaws.

1. The cost of the legal process is excessive and the process used by the Supreme Courts is one of the most expensive in the land.
2. The lawyers who are administering and practicing in this area of law are unaccountable to Australian families through inadequacies in the Legal Professional Act of 2004.
3. The lawyers who are administering and practicing in this area of law are unaccountable to Australian families because the current system of regulating lawyers within Victoria through the Victorian Legal Services Commissioner is for all intensive-purposes a system of self-regulation. That is lawyers regulating lawyers, in the area of inheritance; it is essential that lawyers are no longer allowed to self-regulate and must be regulated by a body that is independent of The Law Institute of Victoria.
4. There is no mandatory training for lawyers who practice in inheritance law with an emphasis in the importance of cross generational family cohesion and its impact upon family development.
5. No quality standards have been written for lawyers who practice inheritance law so as to insure the interests of the family of the testator are even considered let alone given priority over lawyers' fees.
6. Lawyers who are in private practice are not required to respect the human rights, inheritance rights or family rights of the dead when administering a deceased estate.
7. Lawyers who are nominated as executors are not bound by the Legal Professional Act 2004 as they are not deemed to be acting as lawyers when they are executors.
8. Lawyers who are acting as executors can empower themselves over bereaved families by hiding crucial information about the wishes of the dead from their children under the guise of legal client privilege.
9. These lawyers are also allowed to lie to the children of the dead about what is contained in this information and even when the Victorian Legal Services Commissioner is provided with evidence that proves they have lied, this office will not act to discipline them.
10. Lawyers who represent these lawyer executors are also immune from disciplinary action by The Victorian Legal Services Commissioner. When they attend meetings where both a family member executor is present and the lawyer/executor is present and the lawyer executor tells lies to the family nominated executor, even though the lawyer is representing two clients at the same time and is obligated to inform each client if he becomes aware that one or the other is lying our legal regulator does nothing.
11. When there are issues involving corporate relationships between the person who has died and business partners; it is almost impossible to obtain documents that will reveal the true assets of the deceased if the business partner does not want to cooperate.
12. The cheaper, quicker and more accurate, truth seeking system that is used in Europe as detailed by Annett Marfording is not even being considered by the legal profession as an appropriate system with which to deal with inheritance law.

13. The vested interests of the legal profession currently dominate the direction of law reform in this important area at the financial expense of all Australian Families and are impeding the development of our nation as a whole.

Recommendations.

1. Ensure that when reforming inheritance law the interests of Australian Family development are put to the forefront by providing the appropriate funding to family interest groups so as to ensure a dominance of family representation over the legal profession's representation at the law reform process.
2. Investigate the implementation of a cheaper, faster and more accurate truth seeking system to service the needs of families who are caught up in inheritance disagreements and set up low cost tribunals.
3. Cap the legal costs on an inheritance dispute to no more than 5% of the value of the estate and ensure the legal costs represent value for money to Australian families.
4. Ensure that lawyers who are acting as executors no longer engage in misleading and deceptive conduct under the Trade Practices Act 1974 by altering the anomaly within the Legal Professional Act 2004 and make them lawyers when they are acting as executors.
5. Make lawyers who are working in inheritance law work to a set of standards that are written with the purpose of ensuring that the lawyer or lawyers are always acting in the best interests of Australian families.
6. Legislate so as lawyers who are working in inheritance law have to complete a minimum amount of mandatory training in the impact of inheritance upon families and their intergenerational development.
7. Make all lawyers and the judiciaries who are working in inheritance matters observe the International Charter of Human Rights with respect to family development.
8. If there are corporate discrepancies within the business dealings of the deceased make sure the corporate regulator ASIC has the legal power and resources to investigate and obtain any relevant information for the family of the deceased without having to resort to the expensive civil process of litigation. In other words make sure that the beneficiaries can call on the services of a policeman instead of having to rely on a lawyer at \$500 per hour.
9. Create a transparent system for the process of inheritance so as lawyers and lawyer executors are not permitted to hide any information that will assist Australian families to determine the wishes of a relative who has died. Create a system that mandates an open and transparent system where information is freely exchanged in order to overcome any disagreements.
10. Create laws so as a lawyer and their law firm who is an executor cannot empower themselves over a family by legal thuggery.
11. When lawyers who are executors engage in dishonest conduct ensure:
 - The regulator The Legal Service Commissioner has the power to investigate any allegations and that those investigations are carried out in an open and transparent manner so as that all parties can view the correspondence.
 - If the regulator discovers any impropriety bring in legislation so as criminal prosecution can occur.