



**CITY OF SYDNEY  
LAW SOCIETY**

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22 May 2014

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

Dear Commissioners

**RE: ACCESS TO JUSTICE – COMMENTS ON DRAFT REPORT**

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We refer to our initial submission of 21 November 2013 and the Commissions' request for comments on the Draft Report.

We note that Commission has discussed a broad range of topics in its extensive Report. The City of Sydney Law Society would like to make the following comments only in regards to specific sections of the Report:

**1. A Responsive Legal Profession** – at p221 of the Report there Table 7.2 titled Top 10 Law Firms by Revenue which sets out the revenue of these firms for the 2011-12 financial year where the figures run to many millions of dollars. The Commission does acknowledge that the market for the majority of solicitors in small firms is more limited. However we submit that the Commission should amend this part of the Report to provide more statistics showing a more a balanced view of the situation.

**2. Reforms to allow other professionals to do legal work** - at p 215 the Commission states "consider allowing other appropriately qualified professionals to perform select tasks that are the exclusive domain of lawyers". There are a number of problems with the assumptions built into this recommendation. It is not clear what tasks are exclusively the domain of lawyers now. In most areas of the law the market has been substantially opened up to other existing and / or new professions (e.g. conveyancing, financial advisors re mortgager, non-lawyer mediators).

**3. Reform of the Professional Indemnity insurance market** - p51 the Commission recommends removal of sector-specific requirement for approval of professional indemnity insurance products for lawyers and allowing all insurers who want to offer Professional Indemnity insurance products to obtain approval from APRA. There are many members of our Society who have expressed concerns about the high cost of Professional Indemnity insurance in NSW and advocated that the current provider's monopoly be removed by opening it up to a number of insurance providers.

4. **Restriction of legal representation** - at p55 the Commission recommends that restrictions on the use of legal representation should be more rigorously applied. The Society opposes this recommendation as the right to legal representation by an appropriate professional is fundamental to ensuring that a member of the public is treated justly in any tribunal or court.

5. **Damages-based billing** - at p67 the Commission recommends removal of the restrictions on damages-based billing .The Society supports this as a way to provide more access to legal services for members of the public by structuring reasonable incentives to law firms where both the lawyer and client agrees to this billing method.

6. **Legal Expense Insurance** – at p68 the Commission seeks feedback on the prospects of legal insurance being offered by private providers. The Society supports the development of the market for this form of insurance and is optimistic that there would be insurers would be interested if they are informed about the Commission’s request for feedback. There are already two insurance provides who have made submissions to the Commission about this topic (see submissions 108 and 154).

7. **Current pro bono efforts** - at p720 the Commission states that these efforts are at the present time relatively modest. The Society submits that this is not a fair comment and that the Profession is generally relatively generous in supplying services on a pro bono or without cost basis. For example, our own Society is responsible for organising the roster of duty solicitors who give advice to members of the public at the Local Court in Sydney on a pro bono basis.

We trust that these submissions are of assistance to the Commission and welcome questions at any time.

Yours faithfully,

**Phillip Roberts**  
Convenor  
Practice Viability Subcommittee  
City of Sydney Law Society

**Stephen Bell**  
President  
City of Sydney Law Society