SUBMISSION BY THE AUSTRALIAN INSTITUTE OF CONVEYANCERS TO THE AUSTRALIAN PRODUCTIVITY COMMISSION REVIEW OF MUTUAL RECOGNITION

The Australian Institute of Conveyancers represents approximately 1000 Conveyancers throughout Australia who are operating under either a Licensing system controlled by Government or a self-regulated system under the auspicious of an industry body.

When mutual recognition legislation was introduced in 1993 it was anticipated that it would be beneficial to our industry to enable them to move freely between States and Territories, should they choose to do so. Unfortunately, this has not happened and in fact major stumbling blocks have been thrown up by Governments and authorities in Queensland and Victoria which would enable our profession to move freely between those States.

If mutual recognition is a convention whereby two or more governments agree to recognise each other's regulations, even where such regulations differ, then what is to be done when some Government's erect artificial barriers to such recognition and do everything in their power to ensure the workers wishing to transfer are unsuccessful.

The States where a Licensing system exists for Conveyancers are : South Australia, Western Australia, New South Wales and Northern Territory. The self-regulated State is Victoria. Conveyancers are not able to operate in Queensland or Tasmania, although a Licensing system was recommended to be adopted in Tasmania a few years ago but thus far nothing has been done about it.

The Queensland authorities, however, are actively working against allowing mutual recognition to work and have done everything in their power (urged on by the Queensland Law Society) to eliminate a Conveyancer, who was Licensed in South Australia, to move to Queensland and operate a Conveyancing business.

Mr. Paul Sande is a highly qualified and professional Conveyancer who moved to Surfers Paradise and commenced practice in February 1994, only to attract the ire of the Queensland Law Society who took repeated action against Mr. Sande in the courts to close him down and allow them to continue their monopoly in Conveyancing work in Queensland. There is now a farcical situation which exists whereby Mr. Sande has relocated his practice in N.S.W. to be be able to legally carry out work on Queensland properties.

The Queensland Law Society (with the support of the Queensland Government) were ultimately successful in their insidious campaign and forced Mr. Sande over the border into New South Wales where he now operates a very successful Conveyancing business.

Mr. Sande's case highlights the deficiencies of the Mutual recognition legislation when a particular Government can raise barriers to movement of workers between States under the guise of protecting the consumer but in fact protecting the monopoly of the strong well financed Queensland Law Society over the genine skilled worker who challenges their position.

The Queensland Government recently held a review of the legal profession as required under National Competition Policy. The results of this review (which we believe were favourable to Conveyancers being allowed to operate in Queensland) have never been released and the Queensland Government has repeatedly delayed publication of the Consultants recommendations.

In Victoria the ability of Conveyancers to move across borders into a Licensed State or Territory is completely prohibited because no government Licensing regime exists and therefore States like South Australia, Western Australia and New South Wales would reject a Victorian Conveyancer.

The Victorian Government reformed the legal profession in 1996 and introduced the definition of Conveyancer into the Legal Practice Act, thus acknowledging that the profession existed but tying one hand behind our backs. Accordingly, Conveyancers can operate in Victoria but the Government does not set benchmarks or standards or even require them to be educated!

The Australian Institute of Conveyancers (Victorian Division) (also known as the Victorian Conveyancers' Association "VCA") was established in 1989 and has grown to be acknowledged by the Government as the Peak Industry Body.

Due to the lack of standards established by such deregulation, the Institute has introduced important standards and guidelines for Conveyancers. For example, the Legal Practice Act does not require Conveyancers to hold Professional Indemnity (PI) Insurance. The Institute requires it's Members to have mandatory Professional Indemnity Insurance, despite the fact that over the past couple of years this has become very difficult and expensive to obtain. In fact the Institute has been advised that the lack of a Licensing system for Conveyancers in Victoria has been a major factor in Insurance companies reluctance to arrange P.I. insurance.

Another standard set by the Institute in Victoria is a requirement to have completed an educational course in Conveyancing. It has taken the Institute many years to finally achieve the course that is currently offered by R.M.I.T. – a Diploma in Conveyancing – a two year part time course. The Victorian Government has no requirement for a Conveyancer to undertake an educational course to operate.

The list of standards set by the Institute goes on – a Code of Conduct established, Continuing Conveyancing Education promoted, seminars and workshops organised, etc. etc. All these benchmarks mirror the requirements for licensing of the other States but the difference is that it is the Australian Institute of Conveyancers (Victorian Division) which is the de facto Licensing Authority.

Despite the fact that Conveyancing activity in Victoria is substantially the same as Conveyancing activity in New South Wales, the lack of a licensing regime means that Victorian Conveyancers are prohibited from being recognised to operate in that State.

Conversely, a N.S.W. Licensed Conveyancer need have no fear of being able to operate in Victoria, as the Victorian Government will allow them to operate freely but not to carry out the legal work which they can carry out in N.S.W. but are prohibited from doing so in Victoria.

The President of the A.I.C. (Victorian Division), M/s Pauline Barrow, is making a Submission to the Commission and I fully support her in her endeavours to rectify the injustices experienced by her and her colleagues in Victoria.

Whilst mutual recognition may work effectively for some trades and professions, due to the fact that the Licensing regimes are similar around Australia, Conveyancers wishing to operate in Queensland are unable to take advantage of the legislation due to barriers set up by Government and Conveyancers in Victoria are unable to move across boundaries due to lack of Government legislation.

In a further attempt to challenge the Queensland Law Society's power to prohibit Conveyancers to operate in Queensland, a N.S.W. Licensed Conveyancer, Mr. Dale Turner, applied to The Queensland Supreme Court for a Licence to be a Solicitor with Conditions, arguing that the work of a Solicitor in Queensland handling only Conveyancing is substantially the same as the work done by a Licensed Conveyancer in N.S.W. The Application was refused and Mr. Turner has appealed to the Administrative Appeals Tribunal. The Tribunal has received submissions from Mr. Turner and the Queensland Law Society who are arguing vehemently that the work is not the same. The Hearing is due to take place on 31st July in Sydney.

Mr. Turner, Mr. Sande and the Australian Institute of Conveyancers are small players who are up against an extremely wealthly and influential Law Society, who obviously have the ear of Government. The question is can an individual win against the might of such a strong body and gain proper recognition for his work for him to enable Mutual recognition to work for the Conveyancing industry?

The challenge to the Productivity Commission is to ensure that the individual's rights are not taken away by a stronger power.

Yours faithfully,

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April 2003