AUSTRALIAN INSTITUTE OF CONVEYANCERS
RESPONSE TO DRAFT RESEARCH REPORT
EVALUATION OF THE MUTUAL RECOGNITION SCHEMES

At the outset I wish to point out an error contained in the Draft Report . On p.14, last paragraph beginning "However, the AAT…" wrongfuly attributes the ensuing quote regarding conditions to the AAT when in fact the AAT Hearing was only held on 31st July and 1st August (which I attended). The quote was from a decision by The Registrar, Supreme Court of Queensland (2002) AATA 741 which was an interlocutory decision regarding an application by a third party to be joined as a second respondent in the matter when Dale Turner applied to the Queensland Supreme Court to become a Solicitor with Conditions.

The AAT have confirmed that the Draft Review misquoted DP Purvis and I have forwarded a copy of their letter to you under separate cover.

The final decision of the AAT will not be known for some months. However, it was abundantly clear from the evidence given at the Hearing by the Registrar of the Supreme Court and the Queensland Law Society that they do not want Conveyancers in Queensland and will do everything they can to maintain the Solicitor's monopoly in Conveyancing, despite strong evidence from the Applicant (Dale Turner) showing the equivalence of the occupations in NSW and Queensland.

Section 5.4 of the Draft (Monitoring and Compliance Systems) goes to the essence of the problems with the MR Legislation where a Government or interested parties wish to maintain the closed shop arrangements. In point form :

- ✓ There are limited mechanisms for enforcement of MR obligations.
- ✓ Jurisdictions can stall changes in legislation or generally against the spirit of mutual recognition (as is currently happening in Queensland and Victoria).
- ✓ Decisions made at Ministerial Council level are not binding on jurisdictions.

The suggestion of a body taking active responsibility for providing oversight of MR policy and operations has merit. The example of the National Competition Council overseeing National Competition Policy is an obvious success.

The problem faced by small organisations like the Australian Institute of Conveyancers, is one of resources - it has been a very expensive exercise to mount the case before the AAT and for an underresourced organisation it could be prohibitive. In this particular Hearing the Queensland Registrar and the Queensland Law Society have unlimited funds to call on and in many instances the cost of such a court case could eliminate opposition and therefore the organisation with the resources has the upper hand.

Section 9 – P.183 – Non-traditional forms of Occupational Regulation

In the Conveyancing profession, Negative Licensing and Co-regulation certainly present barriers to the movement of people between jurisdictions. This is particularly obvious in Victoria where Conveyancers are recognised as being able to operate pursuant to the Legal Practice Act but the Victorian Government are loathe to spend any money on setting up a Register, despite the fact that the Australian Institute of Conveyancers (Victorian Division) has already done all the hard work of establishing a voluntary Register and a Code of Conduct, et. And is more than willing to continue in that role, so long as it can get some recognition from Government which would enable recognition interstate for the purposes of mutual recognition.

Unless pressure is bought to bear on these reluctant Governments by a higher authority such as a body appointed to oversee MR and to enforce the legislation, these Governments can maintain the satus quo and put up barriers to the successful implementation of MR legislation.

6th August 2003

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Administrative
Appeals
Tribunal

SYDNEY REGISTRY

..14 IN WS OM "4

Our Ref; N2002/539
Your Ref:

RECEIVED
20 JUL 2003

17 July 2003

Mr Dale Turner
29 Parke Street
KATOOMBA

NSW 2780
Dear Mr Turner,

RE. Application for Review of Decision

The Administrative Appeals Tribunal ("the Tribunal") is in receipt of your letter dated
14 July 2003, in which you have queried a extract from the "Productivity Commission's review of the Mutual Recognition Legislation" ("the Review"), a copy *of which* has been provided by you.

1 note that the extract has been taken from *Turner and The Registrar, Supreme Court* of *Queensland* (2002] AATA 741, which was an interlocutory decision regarding an application from a third patty to be joined as a second respondent in this matter. I have reviewed the decision and I have discovered that the Review has misquoted DP Purvis. Paragraph 6 of the decision states;

> *The decision of the Respondent was made on 25 March 2002. In the reasons for the **decision /t was** stated (T2 P5):*
>
> > *To reduce, by the imposition of **conditions,** the activities authorised by **registration** as a Solicitor in **Queensland to those** activities which a Licensed Conveyancer In New South Wales is legally authorised to carry on. is not to effect the registration of such a person as **a** Solicitor in Queensland. It would purport to [effect] the registration in Queensland of something, which is outside the denotation of the term 'solicitor". The activities in respect of which such a person would be registered would W be representative of those which a Solicitor is authorised to carry ors.*

DP Purvis, therefore. was quoting directly from the revieweble decision made by the respondent on 25 March 2002. It appears that the editors of the Review misunderstood this paragraph to infer that DP Purr is was expressing of the opinion

of the Tribunal itself I must stress that this is incorrect and that the extract does not convey the opinion of the Tribunal at the time of the decision. The Tribunal, therefore, remains impartial.

I hope *that* this assists in clarifying this matter for you. If you wish to discuss the matter further, please do not hesitate to contact me on 02 9391 2533.

Yours sincerely

Niamh Kinchin
Team Leader - Members Support