AUSTRALIANINSTITUTE
OF

Conveyancers

24th September, 2003

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M/s Maggie Eibisch
Admin Officer - Mutual Recognition Review
Productivity Commission
P.O. Box 80
BELCONNEN A.C.T. 2616

Dear M/s Eibisch

Re: Queensland Lawyers Maintain Their Monopoly

I refer to the Submission sent to you in April 2003 on behalf of the Institute and would like to draw your attention to the recent decision by the Administrative Appeals Tribunal (AAT) dated 10th September, 2003 (No.2002/1539) which refused an Application by Mr. Dale Turner (a Licensed Conveyancer operating in N.S.W. and the immediate Past President of the Australian Institute of Conveyancers) to be granted a practising certificate in Queensland as a "Solicitor with conditions". The conditions would be to restrict him to doing conveyancing only.

As you may be aware, Mr. Turner initiated the case under the principles of Mutual Recognition by applying to become a Solicitor in Queensland restricted to conveyancing, arguing that the scope of work carried out by a Licensed Conveyancer in N.S.W. was equal to the work done by a Solicitor in Queensland who handled Conveyancing. Not surprisingly, his application was refused by the Queensland Supreme Court. He then appealed to the AAT, again to be refused and denied entry to operate in Queensland. In fact, Mr. Turner does not necessarily wish to become a Solicitor per se but wishes to carry on in Queensland the same business he is qualified to carry on in N.S.W.

As pointed out in my previous Submission, the Queensland Government is denying Conveyancers from operating despite the fact that Conveyancers handle the work in Solicitors offices and many wish to operate independently. In addition, Conveyancers from other States wishing to move to Queensland are prevented from doing so by by an artificial barrier put up by the Government and wholeheartedly supported by the Queensland Law Society.

I have enclosed copies of articles from the Australian Financial Review and Courier Mail commenting on the AAT decision. The articles reinforce the disgust that has been felt by the profession throughout Australia. In it's Editorial of 17th September, the Australian Finance Review states

> "*.... more reform is needed. If Queensland can repel Mr. Turner at the border to protect a Solicitors' monopoly enforced by the Queensland Law Society with the complicity of the State Government, something is wrong with the machinery of national competition policy. "*

It is appalling that a strong self-interested body such as the Queensland Law Society can blatantly state that it is more important to protect the financial interests of it's Members than to introduce true competition into Queensland. Their stand is obviously supported by the Queensland politicians, many of whom are or have been Solicitors themselves.

It is now imperative that pressure be brought to bear on those Governments who are reluctant to allow true competition to exist. A national body should be established to oversee and enforce the Mutual Recognition legislation.

If such Governments can ignore the principles of National Competition Policy and deny their citizens the benefits of competition, then their funding should be curtailed until they agree to break down the barriers currently existing./
If would be happy to discuss any of these matters with you at your convenience.

Yours faithfully,
Australian Institute of Conveyancers



Jill Ludwell CPC President
Enc.

------*Original Message* ----------

From: **todwyer@tpg.com.au**
Date: Friday, 12 September 2003 08:31:17 AM
To: ARGONAUT WATCHDOG
Subject: ALAS, LITTLE IS EVER SAID ABOUT THE LUCRATIVE 'MONOPOLY' OF OTHER 'GREEDY' SELF-INTERESTED TRADES, PROFESSIONS AND INDUSTRIES:

FROM TODAY'S COURIER MAIL:

Conveying their greedy self-interest

Greg Barns

12sep03

Jack Lang, the legendary NSW Labor premier of the 1930s, used to say, "Always back the horse called self-interest, because you know it's the only one trying."

Lang's pithy observation is spot-on when applied to the Queensland Law Society. It has fought a running battle over the past decade to preserve its lucrative monopoly over the property conveyancing market and, on Wednesday this week, it managed to win again.

The Queensland Supreme Court threw out a claim by NSW conveyancer Dale Turner, who wanted to open his conveyancing business north of the Tweed River.

In rejecting Turner's claim, the Supreme Court has, once again, ensured Queenslanders will continue to pay more than they should when they buy or sell property.

Law Society president Glenn Ferguson didn't even try to hide the fact that it is simply economic self-interest that drove him and his members to keep Turner, a non-lawyer, from conveyancing.

Ferguson said conveyancing is the major income source for solicitors in country towns and implied they would go out of business if non-lawyers were allowed in.

Nothing like a fear campaign about services in the bush to frighten the politicians.

And why does it matter if lawyers are the only professionals a consumer can pay to perform conveyancing? To paraphrase from Bill Clinton's 1992 campaign slogan, "it's the price, stupid!"

In' NSW, where lawyers lost their conveyancing monopoly in 1994, fees fell 17 per cent in two years.

And this price competition is still going strong south of the border.

The Real Estate Institute of Australia's website tells NSW consumers: "Legal costs (for conveyancing) are mostly a minimum of $750 if done by a solicitor, or mostly under $700 if done by a licensed conveyancer."

Across the Tasman, the New Zealand Government has just introduced legislation that smashes the lawyers' conveyancing monopoly.

Kiwi lawyers trotted out the Queensland Law Society line that there already is fierce competition among lawyers in the conveyancing market, so there's no need to let conveyancers compete.

Justice Minister Phil Goff rightly retorted, "If this is the case, then lawyers have little reason to be apprehensive about the reform".

The tragedy of Turner's loss in the Supreme Court on Wednesday is that if the Beattie Government had shown genuine leadership back in 1999, Turner and any other conveyancer could be offering the Queensland consumer competitive prices and service today.

That's because in June that year, then attorney-general Matt Foley released a discussion paper in which the Queensland government's position was the same as what is now being proposed in New Zealand - properly qualified and licensed conveyancers should be able to practise in Queensland.

In the paper, the government gave short shrift to the argument that lawyers would go out of business if they had to compete.

The paper noted that these lawyers have established practices and "community recognition" and could "market their superior qualification to their advantage".

Nothing has changed in the four years since that paper. But still the Queensland consumer is made to pay through the nose to protect lawyers' pockets. Premier Peter Beattie should tell the lawyers enough is enough and act on his attorney-general's recommendations of 1999 so Queenslanders can give Dale Turner some business.

-.Greg Barns is lawyer and *Hobart Mercury* columnist

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[scanned article from Australian Financial Review 11 September 2003]

Qld lawyer monopoly upheld

Chris Merritt
Legal editor

Angry conveyancers promised yesterday to redouble their efforts to break into the Queensland market after a tribunal threw out their bid to enter the Sunshine State in the guise of solicitors.

The decision by the Administrative Appeals Tribunal is the latest setback to licensed conveyancers who have been trying to stop Queensland solictors' monopoly on conveyancing work.

After failing to persuade the state government to end the monopoly, NSW conveyancer Dale Turner tried to join the monopolists at their own game.

He asked the Queensland Supreme Court to allow him to be admitted as a solicitor - but with a practising certificate that would have restricted him to conveyancing.

The Administrative Appeals Tribunal yesterday upheld the supreme court's rejection of Mr Turner's application.

The tribunal ruled that if Mr Turner's activities were to be restricted, "the result would be so extreme as to render him something other than a solicitor."

The Queensland Law Society was a party to the case and welcomed the decision.

Law Society president Glenn Ferguson said he was opposed to allowing conveyancers to compete with solicitors because most solicitors in regional centres were the only solicitors in town and conveyancing was the backbone of their practice.

He said solicitors already provided a cheap, effective service and the cost of conveyancing in Queensland was no longer regulated.

However, the president of the Australian Institute of Conveyancers, Jill Ludwell, said the association would approach the National Competition Council over what it saw as Queensland's refusal to expose solicitors to competition. "The Law Society has won the day again. It has incredible strength," she said.

Conveyancers had repeatedly asked the state government to change the law to bring Queensland into line with most other states, where licensed conveyancers were permitted to compete with lawyers for this area of work. "But our pleas seem to fall on deaf ears," she said.

The introduction of licensed conveyancers had always been accompanied by claims that it would send country solicitors out of business. But Ms Ludwell said that had not been the experience of any state where they had been allowed to work.

[scanned article]

The Australian Financial Review www.afr.com • Friday 12 September 2003

Legal Affairs

Conveyancing market ‘too tough’

Chris Merritt
Legal editor

After successfully fending off the latest challenge to the legal profession’s monopoly on conveyancing, the president of the Queensland Law Society, Glenn Ferguson, said this week that conveyancing had become one of the most competitive areas of legal practice.

NSW conveyancer Dale Turner had asked the Queensland Supreme Court to allow him to be admitted as a solicitor but with a practising certificate that would have restricted him to conveyancing.

While solicitors are the only professionals allowed to compete in this market, Mr Ferguson said the abolition of standard fees a decade ago meant conveyancing was no longer a money-spinner for solicitors.

He had heard reports of solicitors charging just $200 to $300 for conveyancing, a rate he described as "commercial suicide".

Mr Ferguson, who has just taken office, said the market was so competitive in Queensland that licensed conveyancers would have difficulty finding a successful niche for their business if they were permitted to operate in the state.

"Historically you just can’t get it much cheaper than it is now," he paid. But Mr Ferguson said the Law society’s victory over Mr Turner in he Administrative Appeals Tribunal was welcome because conveyancing was the backbone of the practice of many regional solicitors.

"Queensland is slightly different to many areas," he said.

"We have a strong regional base sere. Most of the solicitors in regional centres are generally the only solicitor in that town."

Mr Ferguson’s defence of the solicitors’ monopoly was rejected by the national president of the Institute of Conveyancers, Jill Ludwell.

She said a decision had not yet been taken on whether to lodge an appeal against the AAT’s decision, but she intended to bring the monopoly to the attention of the National Competition Council and the Australian Competition and Consumer Commission.

She described Mr Ferguson’s statements about the importance of conveyancing to regional solicitors as "an old chestnut" and said it was inconsistent with his argument that this was no longer a lucrative area of practice.

She also rejected the argument that conveyancing was already competitive enough within the ranks of solicitors.

"That’s not a good enough argument. They are trying to feather their own nests," she said.

"A conveyancer is not going to move into a country town where there is not a huge amount of conveyancing," she said.

The NSW conveyancer at the centre of this week’s decision, Dale Turner, said the tribunal’s decision indicated that the law in Queensland was administered in three ways: "A law for the rich, a law for the poor and a law for the law."

Mr Turner, who is a former president of the Institute of Conveyancers, said he challenged the monopoly because "if you are qualified to do work in one jurisdiction in this country, then you should be qualified to do the same work in other jurisdictions".

"We have been judged by an officer of the court not to be a member of the legal profession yet we do legal work," he said.

"You don’t have to be a lawyer to do legal work in NSW - you can be a conveyancer."

The AAT rejected his attempt to gain admission as a Queensland solicitor with a practising certificate restricted to conveyancing.

The ruling means that Queensland and Tasmania are now the only jurisdictions where licensed conveyancers are prevented by state law from competing with solicitors.

[scanned article from Australian Financial Review 12 September 2003]

No entry by side door

When the Queensland government declined to abolish the legal profession's monopoly on conveyancing, Dale Turner tried to enter that state's closed market by joining the monopolists.

He tried to use mutual recognition legislation to argue that because he was entitled to work as a licensed conveyancer in NSW, he should be entitled to carry on the same business in Queensland.

To achieve that goal, he wanted to be admitted as a solicitor in Queensland and issued with a restricted practising certificate that would have confined him to the business of conveyancing.

The registrar of the Queensland Supreme Court rejected that idea, and on Wednesday the Administrative Appeals Tribunal upheld that decision.

Mr Turner failed on the crucial issue of whether a licensed conveyancer in NSW is engaged in an occupation that would be equivalent to that of a Queensland solicitor with a practising certificate that is confined to conveyancing.

The tribunal ruled that a conveyancer could never be considered equivalent to a solicitor - even an extremely restricted solicitor.

It said the mutual recognition laws were intended to ensure that people carrying on occupations or activities which were equivalent or substantially the same could practice in other parts of the country.

The laws were not intended to enable one occupation to be "translated into another occupation by avoiding the prerequisites for admission by way of education, training and experience", the tribunal said.

Chris Merritt

Scanned editorial from
Australian Financial Review 17
September 2003

FINANCIAL REVIEW

Backsliders must not win

Queensland's solicitors successfully defended the indefensible last week when they used the courts to rebuff the latest challenge to their cherished conveyancing monopoly. The federal Administrative Appeals Tribunal stymied NSW conveyancer Dale Turner, who had the cheek to want to expand his business north of the Tweed.

Mr Turner's defeat at the hands of the Queensland Law Society is regrettable. It fits a pattern of states denying their citizens the full benefits of competition, whether it be in shop trading hours in Western Australia, energy markets in NSW and Queensland, or taxis in Tasmania. It may also be academic; other conveyancers have conquered Queensland by operating from Tweed Heads in NSW.

But at least it has made it clear that more reform is needed. If Queensland can repel Mr Turner at the border to protect a solicitors' monopoly enforced by the Queensland Law Society with the complicity of the state government, something is wrong with the machinery of national competition policy.

In 1901, Queensland became part of a new nation with a constitution designed to make trade, commerce and inter-course between the states absolutely free. The Turner case shows Queensland's solicitors think this applies only to tradesmen. It's about time they were set straight It also shows the mutual recognition laws enacted a decade ago need updating.

Instead of making it easier for professionals to cross state borders, these laws were used in Mr Turner's case by a powerful vested interest to defend a state monopoly.

Queensland's solicitors argue their conveyancing market is already as competitive as can be, with deregulated prices falling as low as S200 to S300 in some cases. But – competing exclusively among themselves – how would they know? If they were sincere, they wouldn't fear competition from southern interlopers. In any case, lower prices are just one benefit of real competition - it also brings new players, innovation and better service.

A sparsely populated country in a volatile neighbourhood needs the economic stability born of strong national markets for goods and services. The founding fathers understood that when they enshrined free trade as the only absolute value in the constitution. Australians will be better off if the tactical victories of the Queensland solicitors' monopoly and other protectionist backsliders are short lived

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The Australian Financial Review
www.afr.com • Friday 19 September 2003

HEARSAY

Despite the Queensland Law Society's successful defence last week of the solicitors' monopoly on conveyancing, the pressure for reform is growing.

The most immediate challenge comes from licensed conveyancer Paul Sande, whose business was kicked out of Queensland in 1997 after he lost a string of court battles with the Law Society.

Sande still lives in Queensland but commutes 30 kilometres every day to Tweed Heads in NSW, where his office is just 70 metres south of the state border.

He has built a conveyancing business that now employs 10 people. And while his office is in NSW, a large part of his market is still in Queensland.

His business, Realty Conveyancing Services, handles transfers of title on Queensland properties from Cairns to the Gold Coast.

And while the state government has refused to change the law to allow conveyancers to compete with Queensland solicitors, it has established a financial relationship with Sande.

"They have appointed us as their agents to collect stamp duty for Queensland. Under Queensland laws we assess it on all transactions," he says.

Despite his success in finding a way to bypass the monopoly, Sande is still angry about the state government's refusal to allow him to use the skills he developed as a licensed conveyancer in South Australia before moving to Queensland.

"To me, it is totally unconstitutional. It is a breach of my rights to free trade," he says.

But Sande has not given up.

He has helped to establish a semi-secret organisation known as the Queensland Institute of Conveyancers, whose member are mostly non-lawyer employees of Queensland solicitors who are preparing for the day when the law allows them to compete with their employers.

"Most of their bosses don't know they are members," Sande says.

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The second threat to the Queensland conveyancing monopoly comes from ozpropertylaw.com, which is the online division of Canberra law firm Nicholas Dibbs.

This organisation was launched this month with the intention of providing cheap, online conveyancing services for a market that will eventually include every Australian state.

Unlike Paul Sande's business, ozpropcrtylaw.com is staffed by solicitors-who hold ACT practising certificates.



Paul Sande has found a way around the solicitors' monopoly. Photo: ROB HOMER

And while they are just as keen to tap Queensland conveyancing market, they plan to wait until Queensland recognises their ACT practising certificates

They won't need to wait long. Queensland Attorney-General Rod Welford is expected to introduce that reform before the end of this year.

Without this change, there is a risk that the online delivery of legal services by lawyers in Canberra might expose them to disciplinary action for practising law in Queensland without a practising certificate.

The chief executive of ozpropertylaw.com, Rhondda Nicholas, says the case law on thissubject is limited. But she recognises that while her lawyers will be in Canberra, their clients will be giving them instructions in Queensland.

Nicholas says her business needs to capture only a small percentage of the conveyancing market in every state in order to be viable, She has already had inquiries from Queensland.

She says she has picked up a fair amount of online conveyancing work from the ACT and NSW.

Nicholas offers a fixed fee of $834, which includes GST and disbursements.