

Comments on draft report on Consumer Law Enforcement and Administration Arrangements.

Submitted by Diarmuid Hannigan.

Please cure the disease don't just treat the symptom.

Currently Australian Lawyers when providing services to Australian Consumers do not come under the umbrella of Australian Consumer Law and the Regulators do not regulate them under the provision of Australian Consumer Law.

"The ACL operates under a 'single-law, multiple regulator' model where the ACL is jointly enforced and administered by the Australian Competition and Consumer Commission (ACCC) and state and territory consumer agencies. The Australian Securities and Investments Commission (ASIC) administer similar provisions under the ASIC Act in relation to financial products and services."

The multi regulator model is not working effectively with regards to services provided by The Legal Profession, by the financial sector and by the residential building sector.

Until the Legal Profession come under the umbrella of ACL and resources are committed by government to prosecute offenders within the legal fraternity for engaging in misleading and deceptive conduct, unconscionable conduct and empowering themselves unfairly in contracts the ability to apply Australian Consumer Law in the interests of Australian Consumers will always be compromised.

The legal profession are the people who, create, administer and interpret our consumer laws and unless they themselves are indoctrinated into this culture via regulation it will be impossible for our nation to progress towards a culture where the rights of consumers are truly protected.

By studying various recommendations such as the Productivity Commission's report 2014 into Access to Justice and work done by various law reform bodies over the past 20 years with regards to Inheritance law it is blatantly obvious that we have a situation whereby the legal profession are more than happy to be paid to create administer and interpret Australian Consumer Law on the proviso that it does not apply to their own business model.

I have cited three separate examples where the law reform process has indicated the need for improved Consumer Protection with regards to the provision of legal services where the recommendations have not been implemented into law.

Example 1.

The Productivity Commission carried out an investigation into Access to Justice within Australia. The Access to Justice Report released in 2014, dedicated Chapter Six, to the interaction of consumers of legal services, with the legal profession. The report revealed concerns over the protection of consumers of legal services by legal complaint bodies.

<http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>

RECOMMENDATION 6.8 State and Territory Governments should ensure greater consumer focus by legal complaint bodies. The legislated objectives of complaint bodies need to explicitly state that protecting consumers of legal services is their primary purpose. In order to support these objectives:

- complaint bodies should report publicly on outcomes achieved for consumers, including aggregated figures of all disciplinary actions.***
- State and Territory Governments should amend enabling legislation to require the involvement of at least two lay representatives in complaint bodies***
- there should be a national review of the effectiveness of these complaint regimes in three years, including their interaction with the Australian Consumer Law.***

I have enclosed a link to a letter from George Brandis which shows which recommendations the Federal Attorney Office has implemented from this report ref .

<https://www.ag.gov.au/LegalSystem/Documents/Government-response-to-Productivity-Commissions-report.pdf>

There is absolutely no mention of the phrase consumer focus or any resources that have been allocated to this new way of viewing the legal profession, as a service provider that acknowledges the consumer rights of its customers, by not engaging in misleading and deceptive conduct, unconscionable conduct of unfair empowerment in a contract when providing services.

Example 2 and 3.

In years gone by when government served our community through a fiducial relationship, prior to the erosive jurisprudence of financial self-interest, the Standing Committee of Attorney Generals (SCAG) realised that Australia`s Inheritance laws required a much needed and well overdue overhaul. In 1993 SCAG approved the formation of a committee headed by the Queensland Law Reform Commission to review our Succession laws with the view to unification across the nation, as the separate state jurisdictions were considered inefficient, costly and inappropriate for our modern society.

Much to the dismay of the naive citizens of Australia the committee comprised of lawyers spent the next sixteen years comprising a five volume report. With the passing of time the jurisprudence of the fiducial commitment by government and its agencies has been all but dissolved through the pursuit of the mighty dollar and with it the vested interests of the legal fraternity have again been upheld.

A simple exercise that could easily have been completed in twelve months was drawn out for a period of sixteen years without producing many changes to the damaging, costly and inefficient mechanisms currently operated by the various state run Supreme Courts within Australia.

The simplest and most obvious solution, although not entirely a cure; would have been to place succession law into the jurisdiction of the Federal Court of Australia.

Along the way there would need to be many changes made to the way legal practitioners are required to behave in this area of the law. (It is called a quality control system)

This legal orgy of succession law reform continued into each separate state after the five volumes were released by the national committee.

Within this clog mire of legal diatribe there were two recommendations that actually helped the families of deceased persons in preventing some of the plunder of the dead by our legal fraternity.

The first recommendation made by the National Committee was that beneficiaries of a deceased estate, that is in the majority of instances, the children of the parent and the close relatives and friends, have a statutory right to gain access to the legal file, provided that all of the legal fees have been paid. This right has been ignored and is still not law within Australia.

The second recommendation, made by the Victorian Law Reform Commission came in two parts: Part one required, lawyers who act as executors to now deemed to be lawyers and complaints against them by beneficiaries can be investigated by the Victorian Legal Services Commission, Part two required The Law Institute of Victoria to write rules for how lawyers who are acting as executors are required to behave. Whether or not lawyers who act as executors are now regarded as lawyers has become part of the "how long is a piece of string argument" which is a very old lawyers trick for making money. The rules have not been written.

The Australian public remain unprotected from financial abuse by a lawyer acting as an executor of a deceased estate. Since there are no rules on how these people should behave, they are capable of lying and hiding crucial information to deliberately create fictitious disputes within families in order to satisfy their unquenchable thirst for money at the expense of family unity.

It is common practice within our migrant community for older people who barely speak English to consult with a lawyer of their own ethnicity with regards to their will. In many instances these lawyers write the will, with a view to ensuring a dispute within the family will eventuate after the death of the testator and also write themselves into the will as executor without the testators knowledge or without advising the testator of the significance and importance this role has on events relating to the estate after their death.

I realise that there are eight separate Supreme Courts within Australia that all manage deceased estate disagreements. I realise that this work contributes about 20% of the revenue base of these courts which feeds the pockets of the legal elite. I realise that most of this work is not rocket science and could be managed by one trained professional instead of a pack of wig wearing, gown cloaked and soulless predators. I realise the pain it would cause these archaic structures if they no longer managed the financial affairs of the dead. I also

realise that if this work were taken away from the supreme courts and transferred to a modern venue, housed within the Federal Court, underpinned by an inquisitorial method of process, the amount of money wasted on legal contests would be reduced and would remain within the confines of the family unit. Years of disputation within family groups would be avoided resulting in improved family cohesion.

All three pieces of proposed legislation were recommended after extensive investigation, the ascendancy, succession law recommendations, have been formed by two committees of lawyers, who have raised their concerns regarding the abuse of power by some members of the legal fraternity who act as executors of deceased estates and two commissioners from the Productivity Commission, non-lawyers who have raised concerns in regards to the obligations of the legal industry towards Australian Consumer Law when providing their services. All of the proposed legislation strengthens the rights of consumers of legal services and throws the onus of accountability towards the legal profession and yet after 22 years and many millions of dollars in costs of conducting these enquires, all three recommendations have been omitted from legislation.

I always knew that lawyers formed the laws, interpreted the laws and practiced the laws, but I did not realise that they also corrupt the reform processes, by ensuring that any proposed laws that will make them transparent, truthful; so as to engender trust and make them accountable, are removed from the platter of legislation, so as they disappear.

From the perspective of a contributor to the process of Australian Legal Reform and a devote member of the church of truth trust and transparency, I had this belief, as do nearly all of us, that the law reform process works towards the overall benefit of our nation and that the recommendations proposed by a committee of our best minds, would proceed into law without much fuss, but my beliefs have been shattered and as a believer of the trilogy, I call for the government to expose our legal industry and declare an apostasy upon them and demand that they be exiled from our society, until they can incorporate the basic principles of Australian Consumer Law into their culture and stop misleading and deceiving the Australian Community into believing they are the good guys who can be trusted.

Please help to rid our society of these legislation thieves and as a representative of our community demand that the legal profession be bought to account under Australian Consumer Law and feel the full weight of the regulator when they engage in misleading and deceptive conduct, unconscionable conduct and unfair empowerment in contracts.

Thank you for reading my story and I trust you are now aware that the legal industry needs to wake up to itself, remove the cloak of hubris that blinds it and hurts the community, by returning to the fold and embracing Australian Consumer law and the principals of Truth Trust and Transparency that makes our society strong and healthy by bind us all together.

Yours Sincerely

Diarmuid Hannigan.