"The one great principle of the English law is to make business for itself. There is no other principle distinctly, certainly and consistently maintained through all its narrow turnings. Viewed by this light, it becomes a coherent scheme and not the monstrous maze the laity are apt to think it."

Chapter 39, Bleak House, Charles Dickens

This observation was made by Dickens in 1853; 160 years ago.

The Commission's admitted focus is on constraining costs and promoting access to justice and equality before the law.

In Australia today, the law and the legal process is a coherent scheme to make business for itself.

The problems that arise in the laudable pursuit of "access to justice" are exacerbated because of this principle of the law: "…to make business for itself…"

Any inquiry into Access to Justice Arrangements must take this principle into account.

This is because the principle of the law in making business for itself is irreconcilable with the Commission's focus of constraining costs.

I am sorry; but this is fact.

The law is about detail. Detail requires time. Time is money.

Because money is limited, access to justice will be commensurately limited.

In their initial submissions; messrs Cavanagh, Mair and Whitton have already alluded to various, self-evident flaws in the process, but stop short of suggesting the process is flawed per se.

Over the past few decades, many government sponsored inquiries have looked for answers to ameliorating access to justice, but without any useful progress.

I recommend that the Commission takes the view that the principle of "making business for itself" is acknowledged as a fundamental, but intractable flaw, and then consider ways this flaw may be mitigated.

The Commission may be inclined to dismiss Dickens's observation as "exaggeration" or "hyperbole", but after spending a lot of time thinking about this conundrum myself, I fear the Commission will miss the essence of the problem if it does so.

I refer the Commission to a Handbook for Litigants in Person (lips), very recently produced by various members of the British judiciary, with the intention of assisting such litigants. This has been deemed necessary, given the dramatic increase of “lips” in the British court system.

http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/A_Handbook_for_Litigants_in_Person.pdf

I do not mean the Commission to study this document at length, but to draw the Commission’s attention to the very first point made in the first chapter on page 2.

Under the heading; “Insurance”, the authors urge any putative “lips” to check their insurances to see if they already have cover for certain legal costs.

Legal Expenses Insurance (LEI) is now an accepted line of insurance in the UK and continental Europe, and is included in most household insurance policies.

Cover is available for the costs incurred for various matters including; Personal Injury, Employment, House and Home, and Consumer and Motoring.

Commercial cover is also available to small to medium businesses.

This insurance is available with access to a legal advice line which provides free, unlimited legal advice on any matter.

There is no tradition of LEI in Australia.

I recommend that the Commission should take the view that legal costs are regarded as an insurable peril, in the same way damage and consequent expense, from fire, storm or theft is regarded. (Such costs are already part of liability covers).

I recommend the Commission carefully consider the valuable role LEI could play in Australia.

I have spent many years developing such programmes, and would be happy to provide the Commission with further insight if required.

It is not a complete panacea to what is a flawed process, but it certainly addresses the Commission’s focus of promoting access to justice.