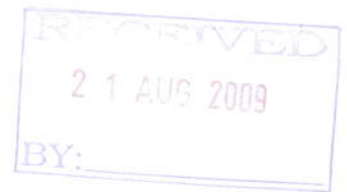


The Law
Society
OF TASMANIA



Our ref:M1.5:LOR/VMC

11 August 2009

Senator Guy Barnett
Chairman
Senate Standing Committee on Legal and Constitutional Affairs – Reference Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator

Federal Court - Tasmanian District Registry

The Law Society of Tasmania would like to thank the Committee for the opportunity to make a submission to the Committee's inquiry into 'Access to Justice'.

Recently, an internal Review was conducted by the Federal Court of Australia which recommended significant structural changes to the Federal Court Registry in Tasmania. I enclose a copy of that Review. The Society believes the proposed changes will have a significant and deleterious impact on the operations of the Federal Court in Tasmania, most particularly on the access to justice afforded to Tasmanian litigants in person as well as those represented by legal practitioners.

As the Society understands it, the Review recommends the abolition of the District Registrar position in Tasmania and its replacement with services offered from Victoria. From a number of perspectives such a prospect is wholly unacceptable to the Tasmanian legal profession and the Tasmanian users of the Federal Court. The Society would have strong objections if such a proposal were to be adopted. It is noted that the District Registrar is the only legally qualified person in the Federal Court staff who is resident in Tasmania.

Tasmania is a State of the Federation and we believe it would be wrong as a matter of principle for a Federal institution not to have an effective presence in each State capital of that Federation. It is the Society's view that without the presence of a legally qualified Registrar in the Tasmanian Registry, the Federal Court would be paying no more than lip-service to the Tasmanian community. In fact a registry service without a District Registrar would also appear inconsistent with Parliament's intention as set out in the *Federal Court of Australia Act 1976*. Section 34 of that Act requires the establishment of a Registry in each State and section 18N relevantly requires there to be a District Registrar for each District Registry.

Tasmania should receive no lesser standard of service than any other State of the Federation. Notwithstanding the assurances of the Court's Chief Justice, it is axiomatic that the standard of service would fall in the absence of a legally qualified Registrar resident at the Tasmanian registry. With the best will in the world, it would not be possible to provide legal services in

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as timely, convenient or personal manner through telephone, video link or the use of occasional visiting Registrars.

The Society also considers the Review to be a superficial and deeply flawed document. It was initially prepared without consulting relevant stakeholders including the Tasmanian legal profession and litigant groups and contains little analysis. The Review was completed and recommendations were being considered by the Court's hierarchy when the Society first learnt about the proposal. It was only at that stage that the most perfunctory consultation was undertaken by the Court.

The Review's claims of apparent annual savings of \$200,000 do not appear to take account of the cost of providing those same services from Victoria. In our view, an objective analysis would also have considered the costs and impact on Court users of the provision of services remotely. Such factors do not appear to have been taken into account by the Court's Review, but were considered by a more thorough study conducted by the Administrative Appeals Tribunal in 2005. Amongst other things, the AAT review recommended the retention of the Tasmanian Registry in its current form. A copy of the AAT Review is enclosed.

The Review also fails to consider other options for the operation of the Tasmanian registry, for example, obtaining financial contribution from the AAT or the option of a legally qualified Registrar working part-time. Indeed, one of the likely consequences of adopting the recommended proposal would be the cessation of AAT legal and case conferencing functions from the Tasmanian Registry and their replacement with services provided from Melbourne.

The Society has consulted widely amongst its members in the short time it was given to do so and has received a large number of submissions from the legal profession and members of State and Federal Parliaments, all of which were opposed to the Review's recommendation.

As an example, I enclose one submission from the Hobart firm Toomey Maning & Co. It reflects the general thrust of submissions made by the profession. The Society endorses the firm's comments.

The Society would be happy to provide any further information that would assist with your understanding of the impact such a proposal would have on the operation of the Federal legal system in Tasmania.

Yours faithfully



LUKE RHEINBERGER
PRESIDENT

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