

25 March 2020

The Hon. Christian Porter MP
Attorney-General for the Commonwealth of Australia

By email: attorney@ag.gov.au

Dear Attorney General,

RE: Assistance to legal and justice sector in light of COVID-19

The legal and justice sector is facing unprecedented challenges, with the COVID-19 pandemic having a substantial impact on courts and legal services all across Australia. The Law Institute of Victoria ('LIV') continues to support the legal profession across Victoria, in recognition that legal services are essential to ensure the operation of courts and access to justice in a safe and civil society.

Assistance to the Commonwealth courts and community legal service centres

The LIV supports priority funding going to those courts that deal with the liberty of the subject and personal safety, including welfare, migration and family law issues. Moreover, priority should be given to those whom remote appearances are rendered practically impossible due to language, disabilities or technical difficulties. The provision of funding to community legal service centres to enable those litigants to obtain representation would likely assist the courts to deal with their cases more swiftly and efficiently, and free up court resources.

Rural, remote and regional (RRR) access to justice

The LIV is acutely aware that there is already unmet and pressing legal need for services and assistance to RRR Australians across the country. Specifically, the delivery of legal assistance services are challenged by higher operational costs, workforce challenges and higher levels of disadvantage in RRR areas. Consequently, the current shortages of local legal practitioners will create increased conflict of interest problems, imposing additional cost and distance burdens on residents, who need to travel further to find help, or miss out altogether. This will be further exacerbated by the impact of COVID-19 on the broader economy over the coming months. We ask that the federal government ensures adequate support to the urgent need for the provision of legal services in RRR communities who have complex needs and often struggle to access relevant and appropriate information and advice.

Difficulties faced by the legal profession as a whole

The LIV fully appreciates the potentially significant economic impact that will face many Australians across multiple sectors, however also wishes to emphasise that legal professionals should continue to be able to perform services which are essential to the community.

It is anticipated that many legal practitioners, including barristers, sole practitioners and small legal practices, will encounter significant financial difficulty over the coming weeks and months. Moreover, the LIV is concerned that such people may fall within the gaps of the government stimulus package, particularly those who are self-employed and receive no PAYG assistance or payroll tax assistance from the State Government. The LIV is also concerned, where members have increasingly reported incidents of workplace discrimination and potential unfair dismissals, as a result of the COVID-19 pandemic.

Should the opportunity arise in the coming weeks to find ways to provide financial support for legal professions who will struggle to continue to offer access to justice for the community due to the impacts of COVID-19, we would greatly appreciate any assistance that could be provided.

Remote witnessing of legal documents

The LIV is receiving a large number of enquiries from members seeking clarification on whether signatures can be witnessed remotely, under the present circumstances. These queries extend to statutory declarations, affidavits, wills, certificates to Enduring Powers of Attorney and Appointment of Medical Treatment Decision Makers. The LIV would greatly appreciate federal guidance on this issue, so that Australian legal practitioners may receive consistent advice.

Electronic legal documents and transactions

Despite two decades of electronic transactions being supported by legislation¹, there is still ambiguity as to the validity of electronically signing legal documents for the purposes of contracting. This puts limitations on accessing capital remotely, as there remains ambiguity of legal certainty that electronic signatures under the *Electronic Transactions Regulations 2000* (Cth) ('ETA') fulfil the requirements of s127 and s129 of the *Corporations Act 2001* (Cth) ('Corporations Act').

It is widely held in the legal sector that the ETA does not apply to the Corporations Act.² As such, businesses, banks and financiers after seeking legal advice as to how contracting credit will most likely be advised not to proceed unless they can obtain a wet signature.

This barrier can be quickly and efficiently remedied by enacting the following:

1. Amending the Electronic Transactions Regulations 2000 (Cth) to provide certainty that the Electronic Transactions Act 1999 (Cth) applies to ss127 and 129 Corporations Act 2001 (Cth).
2. Amending the Corporations Act to clarify that for the purposes of s127 and 129 a 'document' may be electronic, and that a document will be taken to have been signed by individuals, if individuals have signed identical counterparts of it.
3. Adding a subsection to s127 Corporations Act that allows a deed created by a corporation to be in electronic form and signed electronically.

It is crucial that all efforts are made to allow the economy to continue operating whilst adhering to social distancing requirements.

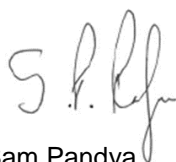
Delays with Medicare, Centrelink and NDIS notices being issued

Some LIV members are concerned about the delays in issuing Medicare, Centrelink and NDIS notices, which the LIV anticipates will be exacerbated by the current health crisis, and the impact that those delays will have on the ability of injured claimants to receive compensation and/or other entitlements.

The LIV urges a prioritisation of these notices so that injured claimants do not suffer hardship as a result of delay in them being issued.

If you wish to discuss any of these matters further, please do not hesitate to contact us.

Yours sincerely,



Sam Pandya
President



Adam Awty
Chief Executive Officer

¹ Electronic Transactions Act 1999

² Diccon Loxton, Not Worth the Paper They're not Written on? Executing Documents (Including Deeds) Under Electronic Documentation Platforms: Part B, (2017) 91 ALJ 205; Alastair Keith, "Electronic Signatures: when are they effective?", Cleardocs, November 2013; Peter Moran, The Paperless Contract, Law Institute of Victoria Journal, June 2015, Vol. 89 Issue 6, 38.; Thompson Reuters, Electronic signatures: Practice Points [Checklist', (Web Page, 18 June 2018) <https://insight.thomsonreuters.com.au/resources/resource/electronic-signatures-practice-points-checklist>