

29 September 2020

The Hon. Jill Hennessy
Attorney-General
Level 26, 121 Exhibition St
Melbourne VIC 3000

By email only to: jill.hennessy@parliament.vic.gov.au

Dear Attorney,

Roadmap to Recovery and the Victorian Legal System

The Law Institute of Victoria ('LIV') thanks the Attorney for your response to our letter dated 17 September 2020 and the briefing from your office and the department on 23 September.

The recent announcements made by government clearly indicate that on the current Roadmap to Recovery, the legal profession, as part of 'offices and professional services' sector, will remain in the current lockdown phase until at least mid-October 2020, continuing to operate under the justice system and court exemptions where relevant.

Whilst the LIV recognises that the government is continually seeking to manage the balance between public health and economic and social recovery, the LIV is disappointed that the critical role of lawyers has not been properly recognised by the government in the current Roadmap. As officers of the court, lawyers are fundamental to the administration of justice and they have obligations to clients to advise them to high professional standards and to defend and uphold their clients' rights under law. Many suburban and regional practitioners support vulnerable and older members of the community for whom electronic service delivery is not practical or feasible.

Many of our members have expressed growing concerns to the LIV that they have been working from home in large part since March 2020 and their ability to adequately advise vulnerable clients on personal, sensitive and confidential matters is increasingly compromised. It appears that continuing to treat the legal profession like any other professional services group does not reflect the significant professional and ethical obligations that members of the profession have to the court, their clients and the community.

Many of our members are concerned about inconsistencies in how different categories of workers are treated by the government across the workforce. For example, some professional workplaces are now allowed to have contact with clients, such as dentists doing non-urgent dental work and real estate agents conducting inspections. Further, other non-professional services are allowed such as dog grooming in a contactless environment. Yet lawyers, even those operating as sole traders, are not allowed to meet with vulnerable clients in their offices to advise them and obtain instructions for real estate transactions or drafting of important commercial or personal documents such as wills. Nor have firms been supported in their important work by allowing some of their workforce to attend their offices onsite to facilitate ongoing working from home.

The LIV has been actively advocating on behalf of members and firms respectfully and collaboratively throughout the pandemic and now seeks your urgent assurance that legal practices will be considered an essential industry during the next stage of recovery. Legal practices need more support from the government to allow them to continue to practise effectively and to high professional standards and to support their clients and the courts, during the next stage of the COVID-19 Roadmap to Recovery. The LIV would of course assist its members as much as possible with guidance to undertake any necessary face-to-face or onsite work in a COVID-safe manner.

While we understand and appreciate the need for a degree of consistency across the professional services sector, we advocate strongly that there is a higher level of professional obligations and standards for the legal profession given lawyers are 'officers of the Court', with the community expectation that lawyers facilitate access to justice, high standards of professional advice and representation to the courts and the community.

The LIV has been working closely with the Department of Justice and Community Safety to facilitate a workable solution to support the reopening of the justice sector and legal practice. In our previous letter, we outlined key areas of concern, which require legal services to operate in order to serve the community appropriately. We reiterate them below:

- Allowance onsite for key operational requirements to enable practices to operate effectively and to high professional standards working from home;
- Individual practitioners who are the only occupant of an entire building should be able attend those premises, but must be the only person in attendance at the building;
- Enabling practitioners or staff at risk or in unsafe home environments to go into the office;
- Clients permitted to attend onsite legal practices where they are unable to access AVL or where there is significant risk or disadvantage to them;
- Court and tribunal hearings should be done remotely unless otherwise directed by a judicial officer – with the caveat that there should be a process for ensuring consistent application across all jurisdictions and locations in the State;
- Amend the *Stay at Home Directions* to allow limited access onsite for key operational requirements to enable practices to operate effectively and to high professional standards remotely where there are no other practical alternatives available (we would envisage this would enable critical activities such as collecting mail, scanning, archiving, shredding documents, non-critical IT etc)
- There needs to be a regional overlay on facilitating all of the above, where practitioners and firms in regional Victoria should be able to move more swiftly through the 'Roadmap' if deemed to be a lower risk;
- To facilitate clearing the backlog, court and tribunal operations should be considered at both regional and metropolitan levels with consideration given to whether regional courts are able to commence some in-person appearances such as trials ahead of metropolitan courts;
- Regarding online hearings, practitioners in metropolitan Melbourne be allowed to attend their offices where the opposing party in a litigation matter is in a different jurisdiction (ie interstate or regional) – participating in an online matter creates inequity as, unlike the opposing party, metro Melbourne practitioners (including counsel and client) are not able to all be in the same room;
- If restrictions are eased to enable greater access to offices for core staff, one person be allowed to attend the office to prepare for an online hearing/matter (non-urgent/priority) as they still need to prepare Court books, eFiling, etc. Many practitioners are unable to scan/print from home, potentially creating OHS issues for practitioners where matters taking longer, eg, working longer hours in the office or mail redirection meaning a person cannot leave the house;
- Support courts having a skeleton staff in Court registries and ability for lawyers to make appointments to attend to inspect hard copy subpoenaed documents or courts to send electronically.

We are committed to continuing to provide advice to and work with the government regarding critical reforms that will allow the justice system to continue to operate effectively through the various stages of the Roadmap.

The LIV is keen to continue working with government and relevant agencies to provide feedback and learn from members' experiences to ensure that the legal profession and the justice system continue to provide essential professional services for the community during the State's Roadmap to Recovery, and into the future.

We would welcome the opportunity to discuss any of these issues with you.

Yours sincerely,



Sam Pandya
President



Adam Awty
Chief Executive