

28 October 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,

Covid-19 Industry Restrictions adversely affecting the legal profession

We are writing to you with serious concerns we have following a recent meeting with other industry stakeholders convened by the Department of Justice and Community Services (DJCS) on behalf of the Department of Jobs, Precincts and Regions (DJPR). This meeting was called to advise the professional services sector of the next steps under the Roadmap to recovery as it relates to professional services, including legal services.

Sadly, we left that meeting extremely disappointed and frustrated that government, without proper consultation with the legal profession, has publicly stated that “activities that can be done at home **must** be”, placing the onus on employers to determine if office attendance is “**reasonably practicable**,”. However, the earlier released Industry Restriction Levels under the third step, stated “All activities that can be done at home **should** be” – following extensive consultation with the LIV and the Victorian Bar.

We note that from 11.59 on 27 October 2020, Victoria entered the Third Step of the Roadmap, which will be followed by subsequent easing on 8 November 2020.

We understand DJCS have been actively seeking clarity from DJPR as to why this change, from ‘*should*’ to ‘*must*’ and the interpretation of “**reasonably practicable**”.

We now seek your urgent clarification on this issue as this ambiguity only serves to open up more questions from a profession that has complied with the law as upstanding members of the Victorian community, as well as officers of the court as required under professional conduct rules.

The advice this week that the government is stepping back from “**should** work from home” to “**must** work from home”, only serves to reinforce the appearance and perceived lack of importance placed by the government on the role of the justice sector and the importance of the profession to the community to be able to access appropriate legal advice, particularly for vulnerable members of the community.

The legal profession has worked collaboratively with government in good faith over the course of the pandemic this year, and in many instances accepted oppressive restrictions for the greater public health benefit. In doing so, many legal practitioners for the good of the community have had to take their work into their home which in some instances, involves graphic, traumatic and disturbing material. The legal profession already has significant

and well documented instances of vicarious trauma and mental ill health issues associated with the nature of their work and to expect the legal profession to continue to do this from home, potentially until the end of the year as implied by the new roadmap and government messaging, is untenable.

On the back of two days of zero cases this week, and many days of low numbers, the reopening of home visits, retail and hospitality, we are concerned that our profession has lost confidence in the government to take an equitable and risk based approach to enable a safe and staged opening up of the justice sector and the legal profession as a whole.

We urge the government to explain the inconsistency in enabling restaurants to open with a density capacity of 20 with potentially hundreds of patrons entering their premises each day, whereas a law firm with 20 staff (or less) and may have only a handful of clients attend their premises would not be permitted to access their workplace.

We are increasingly concerned that the justice system, which has become overstretched during the past six months, will become more so, and given the backlog in the courts and legal system generally, and that it will become unworkable. In addition, we are increasingly concerned about the detrimental impact on firms who are the "missing middle" ie, firms who cannot sustain their businesses and will have to close. Many practitioners have advised that the ongoing sustainability of their suburban and regional practices is becoming increasingly untenable the longer they are prohibited from working in their office and seeing clients in person.

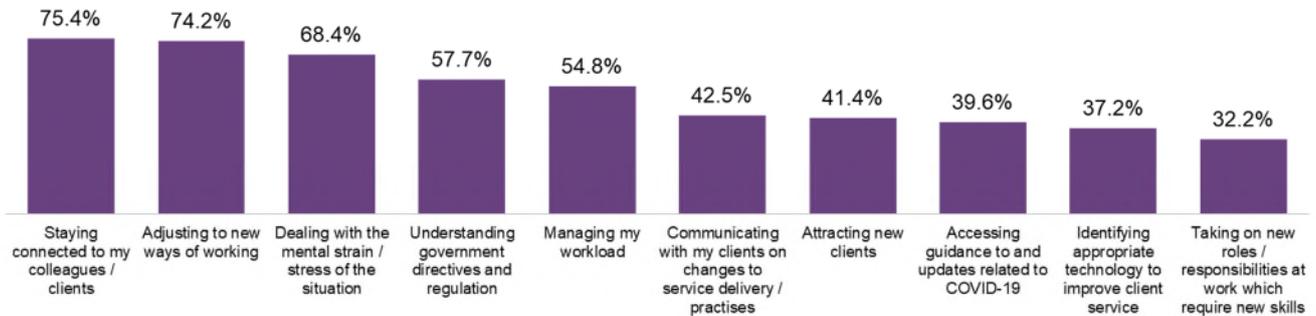
The government restrictions have assumed that most legal work can be undertaken by electronic or similar means, however in reality, many of our members have reported that their clients are often elderly or not as technology savvy as corporate clients with many files and associated documents being only in paper form. This ongoing deprivation of their ability to work in the office in a COVID-Safe manner is clearly not providing the community with accessible and responsive legal advice given their critical role in our community as "officers of the court".

Over the last few months, we undertook a survey of our members as we sought to understand the effects of the pandemic on their businesses. As you can see below there are some extremely concerning sentiments in the legal profession emerging even on the expectation that they would have been moving towards a more staged opening by now.

Of the members who responded:

- 53% of LIV members noted their business is accessing government support schemes
- If government support ends:
 - 50% of members will be forced to reduce their working hours
 - 31% of employees will be made redundant
 - 21% of firms may close temporarily

In addition, further insights demonstrate the significant impact that the ongoing restrictions is having on the legal profession. Of concern is that nearly 70% of members who responded cited dealing with mental strain and stress of the situation as a key issue for them. The following table highlights the core challenges faced by LIV members during lockdown:



As clearly demonstrated in the above statistics, the legal profession has been significantly affected by Melbourne's restrictions.

Many legal practices are small businesses just like retail and hospitality and deserve the same opportunities and respect to safely return to the office with a strong focus on enabling smaller suburban and regional firms to get back to the office as soon possible or practicable for them. With consideration to enabling a modest return to the workforce of larger firms, with potentially a target of 20 per cent attendance by Christmas.

We also urge Government to ensure the legal profession is afforded the ability to open in a safe and measured way as a matter of priority to support the ongoing administration of justice and the broader Victorian community.

We also strongly encourage the government to look to the successful opening of the justice sector in other jurisdictions such as NSW and Queensland. For example, the LIV is also aware that law practices are successfully managing a staged and safe return to work in other Australian jurisdictions. Large law practices have generally advised in respect of their Sydney offices¹:

- that between June and July, practices established strict on-site attendance caps of between 20 and 50 per cent,
- that between August and October, practices established on-site attendance caps of between 30 and 60 per cent,
- that from October onwards, practices are establishing on-site attendance caps of 50 per cent and above.

We understand that, in practice, these attendance caps are only rarely exhausted; attendance at offices has generally been voluntary to date, with many lawyers and staff choosing to continue working from home for most days. However, permitting Sydney staff to register to attend offices subject to overall attendance caps has resulted in several benefits, including:

¹ note attendance caps and timeframes vary between practices, with some practices exceeding or falling below the indicated range.

- ensuring that staff with mental health or wellbeing concerns caused or exacerbated from working at home can return to the office,
- allowing staff to engage with other colleagues in a safe and controlled environment,
- ensuring that staff have access to an appropriate working environment, and
- allowing practices to manage the return to office in a safe and controlled manner.

All on-site attendance is subject to sophisticated COVID-19 policies. These policies feature: social distancing; hygiene procedures; registration protocols, and; common area controls.

We know and appreciate that the Department of Justice and Community Safety have been advocating many of these issues on our behalf, as has your office, but unfortunately, we feel this is falling on deaf ears with other government officials outside DJCS and the broader government.

We would like to meet with you to discuss these issues as a matter of priority.

Yours sincerely



Sam Pandya
President



Adam Awty
Chief Executive