



Re-balance the law!

A non-profit association working towards a more affordable, fair, open, transparent, just, and accountable legal system.

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Submission to proposed new national consumer law consultation
'An Australian Consumer Law: Fair markets - Confident consumers.'
(Closing date for submissions: Tuesday, 17 March 2009)

FLAC is an organisation that tries to help consumers of legal services who have been 'duded' by lawyers.

The supply of legal services is open to the same abuses that the supply of other services is. Indeed, since 'legal services' are never defined anywhere except by circular non definitions (legal services are what lawyers supply), the opportunities for abuse are more extensive compared to the supply of other services. So the 'legal consumer is 'buying' undefined services and is, in litigation anyway, asked to keep paying for them as long as the lawyer keeps delivering them, whatever they are.

One does not need a big array of legal professional associations, legal services commissioners, and legal practice tribunals to sort out disputes between consumers of 'legal services' and their lawyers.

Common issues are :

- What did the lawyer promise to do (OK, actually nothing if you read most retainer agreements)?
- What did the lawyer do that was useful and needed to be done?
- What was that service actually worth to the consumer?

One does not need to be a lawyer to work those things out and actually it is better if one isn't.

Consumers of legal services should be able to complain to exactly the same tribunals and courts as consumers of other services.

For example in NSW the Consumer, Trader and Tenancy Tribunal hears disputes involving tenancy issues, retirement villages, motor vehicle claims, home building and general consumer issues. The maximum claim is about \$30,000. Legal representation is not usually allowed at the CTTT if the amount claimed is \$10,000 or less. Filing fees are around \$200. The tribunal is user friendly.

It may be argued that the consumer is protected by disclosure requirements imposed on lawyers. In practice this results in the client being drowned in verbiage with all the crucial

bits very carefully worded in favour of the lawyer (who writes up and presents the material). So voila ! a mass of junk is disclosed to the client; big deal. What does that achieve?

Recently in Queensland research was done into whether the requirement of disclosure (in writing) of credit contracts helps borrowers at all. 'Consumer Credit Code disclosure: does it work?' (see <http://ssrn.com/abstract=1312963>)

The answer was NO.

The same goes for lawyer costs agreement disclosure. It is a non solution to the 'asymmetry' (as the NSW Chief Justice puts it) of the lawyer-client relationship. It is a 'solution' dreamed up by lawyers that is not meant to work.

Lawyers have invented all the costs assessment procedures (and they administer them) and lawyers effectively discipline their own too (to save errant lawyers from falling into the hands of real tribunals and courts). 'Lay' observers or members are always in a minority where it matters, while legal services commissioners and the like have to preserve a working relationship with the profession, and that means, it can be argued, favouring lawyers over their clients (but not too much too visibly – rather plenty of huffing and puffing is also applied for propaganda purposes.)

In essence, reform should provide non-lawyer assessors and tribunals staffed with non-lawyers to judge consumer disputes between lawyers and customers and so put an end to self regulation. Indeed since any 'reasonable' person can decide what is a 'reasonable' fee then no role logically exists for lawyers as costs assessors.

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