



Précis Paper

The Australian Legal Profession

Mark Livesey QC and Alan Conolly discuss the challenges of forming a national legal profession.

Discussion Includes

- Do we have an Australian Bar, or a number of local Bars?
- What is the overseas view of the Australian profession?
- Should the Civil Liability Acts be uniform across Australia?
- Should the Uniform Evidence Acts be adopted by all Australian jurisdictions?
- What progress has been made towards uniform rules for the legal profession?
- What is the role of the Australian Bar Association?
- Are local professional associations still important?

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The Australian Legal Profession

1. In this edition of BenchTV, Mark Livesey QC (Barrister) and Alan Conolly (Solicitor) discuss the Australian Legal Profession. Mr Livesey QC is a member of the Bar Association in South Australia, however believes that since the first steps have been made towards a national legal profession and the High Court has made it very clear that there is an Australian common law, his ultimate membership is to the Australian Bar.

Civil Liability Acts

2. There are as many as six Civil Liability Acts across Australia. Many of these pieces of legislation, at least historically, were sponsored by the Motor Accident Authority for that particular State or Territory. What was important to that particular Authority would often be seen in the legislation for that jurisdiction. After the HIH Insurance group collapse and the Ipp Report there was a degree of commonality between the acts. Regrettably, that commonality has broken down over time due to a reluctance at the outset to adopt the same approach and piecemeal amendments overtime.
3. Mr Livesey QC does not see a problem at all with the idea that Australia should introduce national legislation, with each of the States and Territories signing up to a particular model or uniform bill.
4. Many people would argue that the Ipp reforms were a particular reaction to an insurance crisis that has long passed, and now that that crisis has passed there is no need for the Civil Liability Acts to remain. However, it is generally agreed that there should be some balance struck by legislation of common law approaches to things such as the standard of care, causation, and contributory negligence.

Costs of Civil Litigation

5. Where there is legislative change over a short period of time, it is only those who are expert specialists in those areas who are able to keep on top of changes easily. That means there is a drive towards specialisation. However, this has also meant that litigation becomes more expensive for litigants. For example, in South Australia, there have been two or three waves of major changes to worker's compensation legislation within the last 10 years. If laws are left as they are with much less change it makes it easier for advice to be given confidently and less expensively.

Certainty of Uniformity

6. Part of the argument for national law uniformity is that there will be more certainty due to more practice of the same law. There is no doubt that it is very useful to be able to look to other jurisdictions, particularly larger jurisdictions, to provide guidance on how legislation will be interpreted. For example, South Australia does not have an Evidence Act counterpart to that in NSW or the Commonwealth Evidence Act which only applies in federal, not state, courts. Thus, South Australia is, by and large, a common law evidence based jurisdiction. Mr Livesey QC believes the *Evidence Act 1929* (SA) is no longer really used and there is a case to be made for the act to be changed, with a move towards uniformity.

Uniform Law for Professionals in NSW and Victoria

7. Mr Livesey QC believes that the process which led to the uniform professional laws for legal practitioners in NSW and Victoria was entirely regrettable as it broke down at the outset when the Commonwealth model which was put forward involved a stripping away of well-understood institutions and conventions in each of the States and Territories and replacing that with a Commonwealth-centric new model which did not last long. What emerged from the model was a federated model with the institutions already in place remaining in place and a thin bureaucratic layer over the top to ensure uniformity. Mr Livesey QC believes this was a much more positive step and notes that it was regrettable that the model was not carried across all of the States and Territories. Mr Livesey QC believes that was due to political issues and perhaps if the politics had been handled differently it would have been more successful. However, now that there is uniformity across the two largest jurisdictions, NSW and Victoria, there is hope that it might spread to the other jurisdictions.

Admission

8. Mutual Recognition Laws mean that it is not necessary to be admitted in different jurisdictions across Australia. Mr Livesey QC believes this is good for the development of a national profession, unlike in the United States where there are very different rules for admission for lawyers in each State.

International Bar Association (IBA)

9. The IBA is a very large international organisation with many constituent committees and fora. By and large, it is focussed towards solicitors in big practices. However, the forum for advocates and barristers was set up by the IBA to represent the interests of the independent referral Bars within the IBA. The original members included Australia, England and Wales,

Scotland, Ireland, which all have independent referral Bars. Barristers are an important part of the overall IBA to provide speakers and write papers.

Australian Bar Association (ABA)

10. Mr Livesey QC was President of the Australian Bar Association (ABA) in 2014-15. Of the roughly 60,000 lawyers in Australia, 6,000 practice at the independent referral Bars as a matter of law or convention. The ABA was established in 1964 by NSW, Victoria and QLD to represent the interests of the independent referral bars and for a long time they were the senior members of the ABA but during the mid-1990s executive membership was opened up to the rest of the States and Territories. Today, the ABA represents the 6,000 Australian barristers and each of the presidents of the local Bars in each State and Territory has a seat at the council of the ABA and from that membership the executive appointments are made for President, Vice-President and Treasurer. Mr Livesey QC notes that the ABA is a very collegiate association where issues like the national legal profession or the uniformity of continuing legal education can be discussed very openly and constructively. The ABA is a very strong supporter of a national legal profession and remains a very influential body on a number of matters.

The Law Council of Australia

11. The Law Council of Australia is the body that represents the 60,000 lawyers in Australia, including both solicitors and barristers. Mr Livesey QC believes it is a very energetic, well-funded and articulate body which forms a very important part of the representation of the profession. As a member of the Law Society of South Australia, Mr Livesey QC believes this is also true for the various law societies in the various States and Territories. He comments that there is a tremendous amount of collegiality and good will across the jurisdictions and there are very able lawyers in each of them.
12. Mr Livesey QC notes that the ABA differs to the Law Council in that it tends to be more attuned to the interests of barristers. There are also certain issues that the ABA is uniquely well placed and better equipped to speak on compared to the Law Council.

Issues facing the Legal Profession

13. There are around 41 law schools in Australia, 47,000 law students and there have been changes in the law resulting in the contraction of the use of the profession in significant ways. The tort of negligence, worker's compensation and crime are typical examples where lawyers can have a significant impact on the lives of ordinary citizens. Because legal standards have risen in these areas and people have become more concerned with their own individual liability, there is less opportunity for young lawyers to give advice in

circumstances where they are worried if they will get it right or not. This is regrettable as these matters are increasingly pushed to larger firms at higher costs.

14. A large amount of law students are finding it increasingly hard to find jobs. Mr Livesey QC believes this issue is likely to continue. He refers to a scheme in Massachusetts where law schools set up law students with senior lawyers to get work experience and provide advice. Mr Livesey QC believes getting young lawyers involved right at the outset in advising people, without fear of being sued, will be part of the solution in ensuring access to justice.
15. Mr Livesey QC is not pessimistic about the future and believes the law continues to attract very bright people and those people once they become professionals continue to work very hard and cleverly on a range of issues. He believes there will always be opportunities for these kinds of people, particularly in the law, because whatever changes are made to the law, there will always be laws that need to be interpreted and applied.

BIOGRAPHY

Mark Livesey QC

Bar Chambers, Adelaide

Mr Livesey joined the SA Bar in 2000 and was appointed Queen's Counsel in 2006. His practice includes appellate advocacy, civil litigation, commercial litigation, insurance, medical negligence and wills and family provision. Mr Livesey was President of the Australian Bar Association 2014-2015.

Alan Conolly

Alan Conolly founded the legal firm AR Conolly and Company in 1968 where he remains a partner in full-time practice. He has chaired companies in diverse industries including oil, IT, dance, agrochemicals and film.

BIBLIOGRAPHY

Legislation

Evidence Act 1929 (SA)