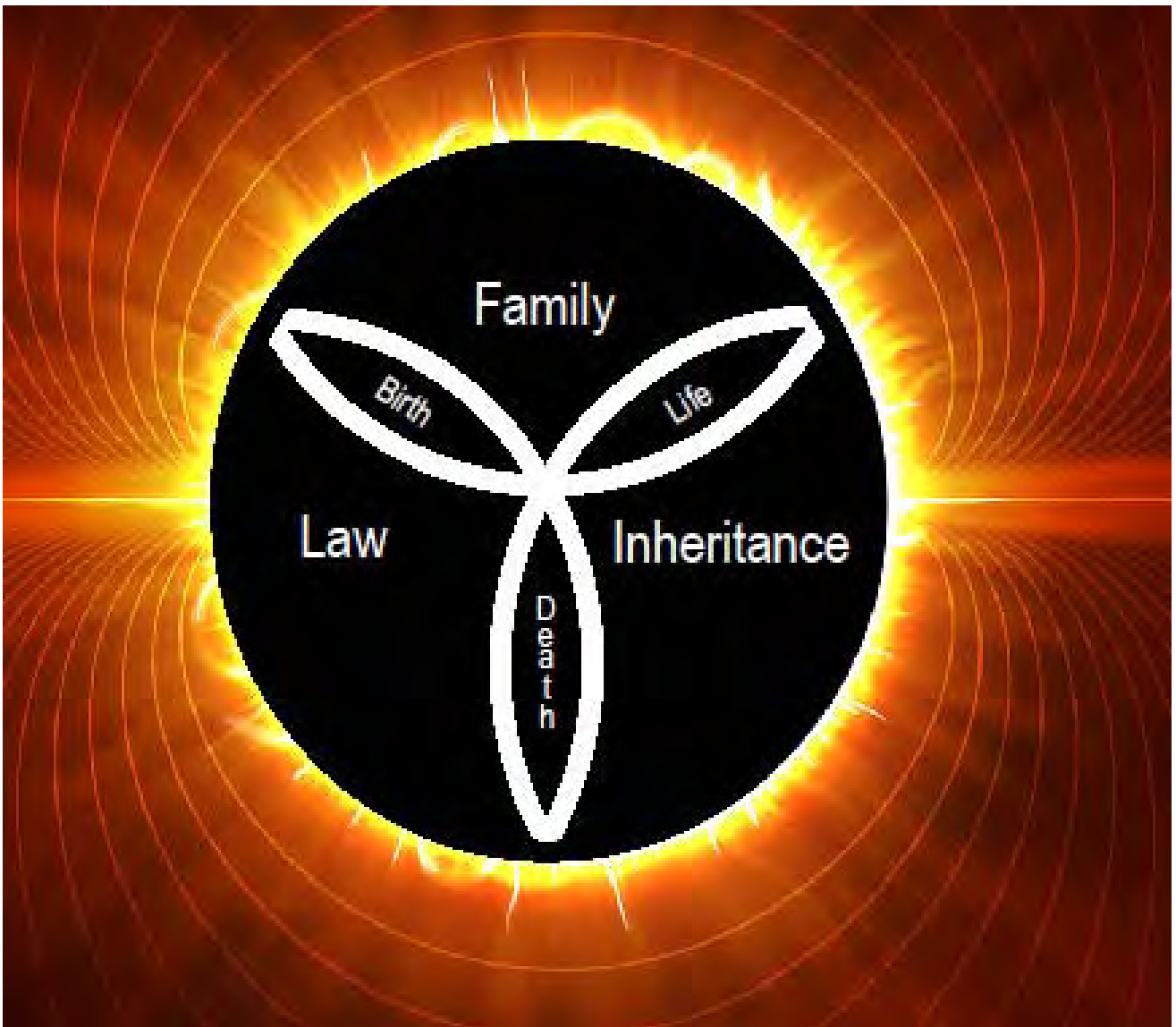


# Submission by Diarmuid Hannigan

14th of August 2012

## The review of Victoria's succession laws



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## What to do.

1. When reforming inheritance law the interests of Australian Family development are put to the forefront by providing the appropriate funding to family interest groups. This will ensure a dominance of family representation over the legal profession's representation during the law reform process.
2. Investigate the implementation of a cheaper, faster and more accurate truth seeking system to service the needs of families who are caught up in inheritance disagreements and set up low cost tribunals.
3. Cap the legal costs on an inheritance dispute to no more than 5% of the value of the estate and ensure the legal costs represent value for money to Australian families.
4. Ensure that lawyers who are acting as executors no longer engage in misleading and deceptive conduct under the Trade Practices Act of 1974 by altering the anomaly within the Legal Professional Act 2004 and make lawyers, when they are acting as executors, accountable under the Act.
5. Make lawyers who are working in inheritance law work to a set of standards that are written with the purpose of ensuring that the lawyer or lawyers are always acting in the best interests of Australian families.
6. Legislate so as lawyers who are working in inheritance law have to complete a minimum amount of mandatory training in the impact of inheritance upon families and their intergenerational development.
7. Make all lawyers and the judiciaries who are working in inheritance matters observe the International Charter of Human Rights with respect to family development so as a persons right to inherit is honoured as a human right under Australian law.
8. If there are corporate discrepancies within the business dealings of the deceased make sure the corporate regulator ASIC has the legal power and resources to investigate and obtain any relevant information for the family of the deceased without having to resort to the expensive civil process of litigation. In other words make sure that the beneficiaries can call on the services of a policeman instead of having to rely on a lawyer at \$500 per hour.
9. Create a transparent system for the process of inheritance so as lawyers and lawyer executors are not permitted to hide any information that will assist Australian families to determine the wishes of a relative who has died. Mandate an open and transparent system where information is freely exchanged in order to overcome any disagreements. Make it a criminal offence when any person whether it is a lawyer who is an executor or any other executor that is paid hides any document that will assist a family in determining the wishes of the dead and give the police powers to investigate and issue criminal proceedings if required.
10. Create laws so as a lawyer and their law firm who is an executor cannot empower themselves over a family by legal thuggery as was the case with my mother's estate by [REDACTED] [REDACTED] [REDACTED] [REDACTED].
11. When lawyers who are executors engage in dishonest conduct ensure:
  - The regulator: The Victorian Legal Service Commissioner has the power to investigate any allegations and that those investigations are carried out in an open and transparent manner so as that all parties can view the correspondence.
  - If the regulator discovers any impropriety bring in legislation so as criminal prosecution can occur.

12. Make lawyers who are executors who cause any financial loss to beneficiaries through mismanagement and dishonest conduct such as lying, pay the beneficiaries for those losses with an extra amount for psychological pain and suffering included.
13. Ensure that lawyers who are performing the role of executors carry compulsory insurance so as any financial damage they cause to the inheritance of the beneficiaries is paid for and that they cannot obfuscate their responsibilities to their victims as has occurred in N S W by Russell Keddie and his action of declaring himself bankrupt to avoid repaying his victims who were claimants of personal injury and who he grossly overcharged.
14. Make sure that the Regulator of lawyers who are acting as executors or who are acting in inheritance matters is an independent regulator, unlike the current legal regulator who is a self-regulator for the legal profession.

## Introduction

I regret having to write what I have had to write but I do not regret a single word I have written for it is the truth. I have written this submission so as no other family is devastated by the legal profession in the same way as my mother's family was after her death. I have presented you with a symbol which encompasses our social structure in regards to inheritance. Each word is symbolic to the way our society functions and is influenced by the way we shape our inheritance laws.

Since the reforms carried out in Victoria and N S W to our inheritance laws will have a major bearing upon the way inheritance is dealt with within all Australian jurisdictions for many years to come.

I felt it essential to clearly reveal that the current succession laws of Australia are working against the interests of Australian families; as they have been shaped by the legal profession over many centuries. These laws favour the profession over families, as can be seen by reading my story.

These laws:

- are very expensive to administer
- take a long time to implement
- benefit the income of the legal profession
- erode the value of family inheritance.

The problems I have identified are not addressed in the current Inheritance Acts of Victoria or N S W, as they relate to the actions of the legal profession whilst carrying out their work in succession law and are not currently covered by the respective acts. These acts were created in a time before the reality of Alvin Toffler's Future Shock became a reality. In a time when lawyers were part of communities and went to church on Sundays, a time when greed was still contained, unfortunately the world has changed and the financial demands upon the legal profession can be onerous and lead to the exploitation of vulnerable Australian families by unaccountable self-serving lawyers.

Since Inheritance has a significant impact upon family development within Australia, I have specified the current failings within the law and have recommended solutions to address those failings.

## Review Inheritance Laws: Summary.

The review of our Inheritance Laws will be very important for all Australian families and will have significant implications on how our laws are administered and practiced in the future. This review will benchmark other reviews of inheritance law in every state and territory within Australia.

The current process of Inheritance law within Australia has serious flaws.

1. The cost of the legal process is excessive and the process used by the Supreme Courts is one of the most expensive in the land.
2. The lawyers who are administering and practicing in this area of law are unaccountable to Australian families through inadequacies in the Legal Professional Act of 2004.
3. The lawyers who are administering and practicing in this area of law are unaccountable to Australian families because the current system of regulating lawyers within Victoria through the Victorian Legal Services Commissioner is for all intensive-purposes a system of self-regulation. That is lawyers regulating lawyers, in the area of inheritance; it is essential that lawyers are no longer allowed to self-regulate and must be regulated by a body that is independent of The Law Institute of Victoria.
4. There is no mandatory training for lawyers who practice in inheritance law with an emphasis in the importance of cross generational family cohesion and its impact upon family development.
5. No quality standards have been written for lawyers who practice inheritance law so as to insure the interests of the family of the testator are even considered let alone given priority over lawyers' fees.
6. Lawyers who are in private practice are not required to respect the human rights, inheritance rights or family rights of the dead when administering a deceased estate.
7. Lawyers who are nominated as executors are not bound by the Legal Professional Act 2004 as they are not deemed to be acting as lawyers when they are executors.
8. Lawyers who are acting as executors can empower themselves over bereaved families by hiding crucial information about the wishes of the dead from their children under the guise of legal client privilege.
9. These lawyers are also allowed to lie to the children of the dead about what is contained in this information and even when the Victorian Legal Services Commissioner is provided with evidence that proves they have lied, this office will not act to discipline them.
10. Lawyers who represent these lawyer executors are also immune from disciplinary action by The Victorian Legal Services Commissioner. When they attend meetings where both a family member executor is present and the lawyer/executor is present and the lawyer executor tells lies to the family nominated executor, even though the lawyer is representing two clients at the same time and is obligated to inform each client if he becomes aware that one or the other is lying our legal regulator does nothing.
11. When there are issues involving corporate relationships between the person who has died and business partners; it is almost impossible to obtain documents that will reveal the true assets of the deceased if the business partner does not want to cooperate.
12. The cheaper, quicker and more accurate, truth seeking system that is used in Europe as detailed by Annett Marfording is not even being considered by the legal profession as an appropriate system with which to deal with inheritance law.
13. The vested interests of the legal profession currently dominate the direction of law reform in this important area at the financial expense of all Australian Families and are impeding the development of our nation as a whole.

## Recommendations.

1. Ensure that when reforming inheritance law the interests of Australian Family development are put to the forefront by providing the appropriate funding to family interest groups so as to ensure a dominance of family representation over the legal profession's representation at the law reform process.
2. Investigate the implementation of a cheaper, faster and more accurate truth seeking system to service the needs of families who are caught up in inheritance disagreements and set up low cost tribunals.
3. Cap the legal costs on an inheritance dispute to no more than 5% of the value of the estate and ensure the legal costs represent value for money to Australian families.
4. Ensure that lawyers who are acting as executors no longer engage in misleading and deceptive conduct under the Trade Practices Act 1974 by altering the anomaly within the Legal Professional Act 2004 and make them lawyers when they are acting as executors.
5. Make lawyers who are working in inheritance law work to a set of standards that are written with the purpose of ensuring that the lawyer or lawyers are always acting in the best interests of Australian families.
6. Legislate so as lawyers who are working in inheritance law have to complete a minimum amount of mandatory training in the impact of inheritance upon families and their intergenerational development.
7. Make all lawyers and the judiciaries who are working in inheritance matters observe the International Charter of Human Rights with respect to family development.
8. If there are corporate discrepancies within the business dealings of the deceased make sure the corporate regulator ASIC has the legal power and resources to investigate and obtain any relevant information for the family of the deceased without having to resort to the expensive civil process of litigation. In other words make sure that the beneficiaries can call on the services of a policeman instead of having to rely on a lawyer at \$500 per hour.
9. Create a transparent system for the process of inheritance so as lawyers and lawyer executors are not permitted to hide any information that will assist Australian families to determine the wishes of a relative who has died. Create a system that mandates an open and transparent system where information is freely exchanged in order to overcome any disagreements.
10. Create laws so as a lawyer and their law firm who is an executor cannot empower themselves over a family by legal thuggery as was the case with my mother's estate by [REDACTED] [REDACTED] [REDACTED] [REDACTED].
11. When lawyers who are executors engage in dishonest conduct ensure:
  - The regulator The Legal Service Commissioner has the power to investigate any allegations and that those investigations are carried out in an open and transparent manner so as that all parties can view the correspondence.
  - If the regulator discovers any impropriety bring in legislation so as criminal prosecution can occur.

# The Elements of Succession law.

## Birth

That miraculous moment of our own conception dictates our birth, our live and our death. It is an instant in time so critical to our being and statistically impossible when one considers the chances of the event even occurring and yet the truth is that we exist. Our life our family and our inheritance are all matters of extraordinary chance that has resulted from those infinitesimal events that stretch back thousands if not millions of years in time. If our forbearers did not do what they did at an exact point in time multiplied from generation to generation and each particular situation in each of their lives, we would never have been born, would never have lived and would never have died. We would never have been part of a family, received inheritance, or needed a lawyer or any laws. From the moment we are born our lives are influenced by the law.

The socio economic status of our parents has a determining influence upon our lives, it affects our health, our education and how we live our lives. Inheritance passed down through the ages from our family forbearers is a key determinate of the socio economic environment into which we are be born.

Family inheritance law has a critical influence upon how family inheritance is managed. When family inheritance is abused by the practitioners of family inheritance law, the value of the inheritance can be substantially reduced. This has had a major impact upon many of us as it is a predetermination for our socio economic setting in life.

The value of family inheritance will determine the schools we attend, the suburbs we live in, the ability of our family to pay for critical intervention services during our lives, and the holidays we spend together with our family. It influences the lives of our children our grandchildren and our offspring for eternity.

Please link to this article published in the Age 20 01 12

Wrong side of the tracks has identified the reality of class division in Australia and its real impact upon Australian Families, <http://www.theage.com.au/national/education/wrong-side-of-the-tracks-in-geelong-makes-all-the-difference-for-childrens-futures-20120120-1qa8v.html>

Refer to Family Matters No. 88, 2011

<http://www.aifs.gov.au/institute/pubs/fm2011/fm88/fm88a.html>

“The wellbeing of Australian families is affected by the resources they have available at present and anticipate will be available in the future (Saunders & Zhu, 2009). Part of that anticipation consists of expectations about what may be left to them by their parents. Those expectations matter. They make a difference to economic planning and to family harmony. They provide young generations with additional assets. They often bring out strong family feelings. In particular, expectations about appropriate and inappropriate inheritance arrangements can lead to misunderstanding, conflict and disharmony in the family.

People's expectations are important also to researchers of family relations and values and to professionals who help people deal with their inheritance arrangements. Lawyers, counselors, public trustees, for instance, all are involved in helping people make appropriate decisions about bequests. The courts often become the final destination of conflicts that tear families apart, sometimes for several generations."

Inheritance abuse is one of the drivers of this class division. The failure of our legal profession and a succession of liberal, labour, and conglomerate governments, both state and federal to address this abuse by the legal profession through tighter regulation of inheritance practitioners and nominated executors has and will continue to drive this class division of Australian Families.

## Life

Our conception and the gift of life, given to us by our family is so unique it is sacred to every person and every family group who have lived upon our planet, it is where trust and the natural bonds between people are born. Our love for our mothers and fathers is a natural love, as is the love they give to their children, the appreciation of the creation of a living child and the gift of being born being naturally shared between parent and child. This love between a child and a parent was given since time began and will continue into eternity. Grandparents, uncles, brothers, sisters, in laws, cousins, nieces and nephews all share in this love of the creation of life and their family.

The natural love shared between family member's forms within us through our lives to shape our personalities. As we develop into children we engage with other people who are also members of families, we share a common history and common values in regards to what is right and what is wrong hence we are able to adapt to and enjoy the new people whom we meet. We make friends, fall in love and produce more children who love and thus the cycle of life continues. This process of living allows us as human beings to understand and develop the concept of trust. Trust allows us to love one another and to form the friendships we find so important in life. The concept of trust entwines itself into the fabric of our laws, and the trust between people and the legal profession in the life blood of the principle of the rule of law.

This love of each other and our need to care for one another brought us together as communities. These communities initially comprised of small tribes of hunter gatherers that evolved into groups of cultivators and eventually into the civilizations we now inhabit. Throughout this transition of human history we have made laws for ourselves. These laws allow us to live together in groups; they are the transfer of wisdom passed down from one generation to the next. Our laws, the rules that we have learned to live by come from the past are moulded in our life times and passed to future generations so as to service the survival of the human race.

Through these transitions we began to create laws so as we could benefit from each other's sharing of resources. We very quickly realised that the ever progressing cycle of birth life and death followed a natural sequence of the passing of the days the transition of the seasons, and the accumulation of time through the years of our lives. We became to know that for our families to remain secure after our own life time, whatever we had managed to accumulate during our lives must be left to them so as to perpetuate our creation that is our own family.

We all know that wealthier people live longer and have happier lives on average. That is why so many of us work hard to earn more money so as we can become wealthier. Another component of wealth stems from inheritance. The wealthier the family heritage the wealthier generally are the offspring, provided factors impacting adversely upon that inherited wealth include war and acts of barbarism or theft are not enacted upon the family.

These events have normally occurred during periods of invasion, where one group has occupied another community's territory and imposed their laws upon that territory, those laws being different from the invaded population's laws and favouring the occupying population. The new laws are not shaped by the families of the occupied nation and do not evolve through the notion of trust, having been imposed by the dominant invader



through acts of war and barbarism. These laws permit the invader to plunder and exploit the families of the defeated and have very little to do with trust.

In our contemporary democratic and multicultural nation Australia we are educated to believe that we can trust lawyers. We know that when we hire a lawyer we are normally dealing with issues of life changing significance either for ourselves or for our family, in such an important consumer relationship we have to be assured that we can trust lawyers. The laws regulating lawyers bind them to their clients through the relationship of trust.

So important and fundamental is this trust between the public and the legal profession to the rule of law that our government finances the office of the Victorian Legal Services Commissioner to ensure us that any lawyers who are untrustworthy will be disciplined so as we can be assured that we can trust our lawyer.

Did you know that if you appoint a lawyer as an executor to your estate that when they become the executor they are no longer bound by the legal professional act and are not deemed to be acting as a lawyer by the Victorian Legal Services Commissioner?

## Death

Death eventually comes to us all with a surety like no other; it is a place where the soul can finally rest in peace. Death is the final event of our lives and with it we leave behind our possessions, our friends and our families. As with birth and our transition through life we cannot escape the law. The law will officially pronounce us dead. It will determine how your body will be treated and through your will it can even determine the destiny of your soul. Our laws have been developed to protect families as they and their development are recognised by all governments as the structures that create healthy societies. The writing of legal wills probate courts and ascendancy laws all work to allow an orderly transfer of the possessions of the dead back to the living.

Approximately 50,000 people die each year in Victoria with an average estate worth \$500,000, approximately \$25 billion per annum.

- The legal profession obtains about 20% of its revenue stream from this source, between one and two billion dollars per year within the state of Victoria.
- With the minimum cost of probating an estate being about \$10,000 and costs ranging upwards of \$100,000 for contested estates that do not go to trial. A full trial starting at \$200,000 to any bodies guess.

I'd have at a guess that the revenue stream to the legal profession and its affiliates from family inheritance in the state of Victoria would be in the region of \$1.5 billion per annum. Over a ten year period 500,000 Victorians who have died will contribute approximately 22 billion dollars of their estates if interest is included to Victoria's 16,000 lawyers, which equates to about \$20,000 for each Victorian family or \$1.3 million per lawyer.

A large proportion of this cost is derived by an inefficient time consuming and antiquated process which is devoid of any standards, mandatory training, and a mechanism to systematically analyse and compare the costs of each particular case with one another. This allows unaccountable lawyers and law firms to further abuse a process that has already operates in their own financial favour.

Hence that saying "Hurt the living Exploit the dead."

## Family

We are all members of a family. The evolution of our laws which originated out of family has led to article 17 of The Victorian Charter of Human Rights being written.

The article states:

Protection of families and children

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.
- (2) Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

In Australian law there is a fundamental disconnect between family and the shaping of law. The problem can be identified in the power sharing arrangement between our federal and state governments which does not extend to the citizens of Australia (except at voting times) who are all members of family units. The current proposed changes to our constitution by recognising the aboriginal people as the first citizens of this land needs to extend into a power sharing arrangement between the citizens of Australia and their respective governments. This shift in power would make governments accountable to the families of Australian citizens. Our laws would then be formed by families in collaboration with the legal profession and would therefore work in the interests of Australian families instead of a self-serving legal profession who remain unaccountable to Australian families. The legal profession obtains approximately 50% of its revenue through its work with families. Divorces, death and debt are its feeding ground. The current legal process that is based upon the English adversarial system is expensive, time consuming, emotionally damaging for all of the paying participants (Men women and children) and has a greater error rate when compared to the European truth seeking system. If our current legal system were to be overhauled so as to work in the interests of families approximately 60% of the legal costs that are currently being bled from vulnerable Australian families by our legal industry would remain in the hands of Australian families.

Considering the significance of inheritance upon a family's development and the role lawyers play in its transfer from the living to the dead one would assume that lawyers who are nominated as executors would be viewed as lawyers by the law and would be regulated under the legal professional services act.

Lawyers who are acting as executors are not deemed to be lawyers by The Victorian Legal Services Commissioner and complaints about their activities by beneficiaries are not investigated by The Legal Services Commissioner because they are not acting as lawyers.

Ref to letter Pg 54 Victorian Legal Services Commissioner 14 01 2011.

"You complain that decisions were made in accordance with the relevant legislation rather than in accordance with your asserted human rights to inherit property and to be a family. With regard to any alleged breach of your human rights by the practitioner, the Victorian Charter of Human Rights only applies to public authorities. A legal practitioner in private practice is not required to comply with the Charter."

Considering that lawyers generate about 25% of their income from wills and inheritance issues which directly influence family trajectory, families being comprised of human beings, one would have assumed that lawyers in private practice who are acting as executors would be bound by our human rights charter.

Inheritance law reform in Australia is occurring at a snail's pace, is dominated by lawyer interest groups and does not involve family lobby groups. Where they do exist they are poorly informed, outnumbered by lawyers and starved of financial and intellectual resources.

Australian families when confronted with an inheritance issue are subjected to an antiquated adversarial process that is expensive, time consuming, inaccurate and favours lawyers prolonging disputes in order to benefit their own pockets in the form of horrendously high hourly fees of \$500 per hour, well over ten times the rate of an average person's hourly rate of pay.

It can be succinctly described as plunder of family or more bluntly put as grave robbing. Hence this web site and the book *Lawyers of Grave Robbers?*.

Our inheritance laws are so draconian that a lawyer executor [REDACTED] and [REDACTED] law firm [REDACTED] were able to withhold a letter written by a deceased mother six years prior to her death, from her children, for a further six years, under the guise of legal client privilege. They stated that the contents of this letter allowed them to distribute her estate unequally amongst her children. Upon the family receiving the letter it revealed that [REDACTED], supported by [REDACTED] law firm [REDACTED], lied about its contents.

The word "lie" being used to describe conduct that gives rise to issues of breach of duty, deceit, misrepresentation, and false and misleading conduct.

This whole saga was carried out under the noses of the Law Institute of Victoria, The Legal Services Ombudsman, the State and Federal Attorney Generals, the Victorian Legal Services Commissioner and the Victorian Ombudsman. All that was asked of these bodies was to give my mother's family a fair go by getting [REDACTED] to give my mother's family a copy of the letter so as we as her children had the power to interpret our own mothers wishes. These bodies denied my mother's children that right and allowed a terrible breach of duty, deceit, misrepresentation, and false and misleading conduct to be perpetuated upon them by an unaccountable lawyer [REDACTED] and the members of [REDACTED] law firm [REDACTED].

One would only find such oppression of family within the walls of a prison. A prison established in a place where family ties no longer existed. A prison situated on the other side of the planet in a time where aeroplanes did not exist, the telephone and radio had not been invented and the only means of communication was through the written word by a population of which 90% could neither read nor write. A prison situated on a land deemed by its masters as terra nullius there by even denying its original family residents, the aboriginal people a right to the recognition under the law of their family existence.

## Inheritance

Definition: The right of an heir to succeed to property after the death of an ancestor.

To manage this transfer of ownership from life to death we created inheritance laws so as our families would not be racked with dispute upon our deaths. Family inheritance law is one of the foundation blocks upon which human civilisation has been created. It has been formed by family in the interests of positive family development and survival.

When a lawyer from outside of the family group comes into a power conflict with the family, as is the case between my mother's family and [REDACTED], the law must act in the interests of the family and not in the financial interest of the lawyers ([REDACTED]). Inheritance distribution within a family unit after a parent has died is a process based upon trust and is the outcome of all of the events and relationships between the parent and their children throughout their lives. It is the final act of love that a parent bestows upon their children when they leave this world, knowing that they will no longer be there to help and protect them. This final act of love is bestowed to their offspring and others they loved by the deceased in the form of a legal document known as a will. A will is a legally binding contract that states the wishes of the dead in regards to how their possessions should be distributed to the living. It is a sacred document enshrined in law that has evolved over thousands of years of human development. The person writing their will assumes it is protected by law, and assumes that all persons participating in their will, shall not abuse those laws by behaving in a dishonest manner to serve their own interests. Particularly lawyers placed in a position of fiduciary trust as executors by the deceased. The deceased person believes those lawyers will tell the truth, be accommodating to the needs of their family and will not abuse their position of power, a power vested in them by the deceased in the form of trust. If these people do abuse this trust by serving their own interests they abuse the inheritance rights, the family rights and the human rights of the deceased's family members. They also abuse a system of law that has been built

on thousands of years of wisdom that has evolved with human civilisation, and the realisation that families are the fundamental group unit of society and are entitled to be protected by society and the State.

## A Will

A will is a contract between the living and the dead. It is the bridge between life and death. A will describes in law who will inherit their possessions after their death. It is a reflection upon how the deceased person felt towards the beneficiaries of their estate, particularly their own children. A will, will have a lasting benefit upon the people who inherit and their families. A will, will nominate an executor or executors who are in an absolute position of trust so as their wishes regarding their estate may be carried out after they have died.

Quite frequently people nominate their lawyer as the executor to their estate in their will, after all they go to a lawyer to get their will written and in the process they make the lawyer the executor. Our multicultural, society and the large influx of migrants to Australia after World War 11 who have few extended family networks has led to a greater dependency by our population on lawyers becoming executors.

When people nominate a lawyer as the executor they are not aware that:

A lawyer who is an executor can make a decision based on information he or she has that can be claimed to be privileged. This means that this information can be withheld from family members, even a family member who has been nominated by the deceased as an executor, even when the family member and the lawyer executor disagree upon the wishes of the deceased.

The lawyer executor is not accountable for the decisions he or she makes under the Victorian Legal Professional Act 2004 because they are acting as an executor and not a lawyer. They can claim that the information they hold that allows them to hold their view of the deceased wishes is privileged, and should not be available to the family member executor.

This situation puts the lawyer executor in a more powerful position than the family member executor when determining the wishes of the deceased.

If we concur that the family unit is the foundation block of the formation of our civilised society, thus the point from which our laws emanate then why is it that the legal professional who is acting as an executor of a deceased estate can be allowed to hold vital information from the family member executor which can assist in determining the wishes of the deceased?

In attempting to make a decision of the wishes of a person who is no longer alive one would have thought that the interpretation of any information disclosed to any party including a lawyer should be available to the family representative in order that the family representative may also have an interpretation of that information. Particularly when one considers that the family representative would in most instances have been in contact on regular occasions with the deceased before they died and would be familiar with their wishes.

The law even allows the lawyer executor to engage in acts of, breach of duty, deceit, misrepresentation, and false and misleading conduct. In other words lie about or misconstrue the contents of this so called privileged information to the children of the deceased and when our legal services commissioner is provided with the evidence of the lie he states: Ref pg 29 Letter written by Victorian Legal Services Commissioner 20 02 2012

“In this case, I note that you have provided me with a copy of your late mother's letter to ■■■ dated 30 October 1998. Whilst the letter itself is a document that I have not previously had an opportunity to consider, the contents of same do not provide me with any new information which would allow me to re-open the complaint.”

Appointing an executor to your estate will be the greatest acts of trust you will ever commit to because when you're dead you have no say. The executor does.

A lawyer is appointed as an executor by the deceased as a complete act of their faith in the trustworthiness of the law and the legal profession and yet in most instances the lawyer who is appointed as executor will not tell the testator that when they act as an executor they will no longer be acting as a lawyer and will not be bound by the legal professional act and will not be accountable to the Victorian Legal Services Commissioner.

This concealment by the lawyer of the true nature of the relationship the testator is entering into with the lawyer contravenes the Trade Practices Act and is an act of misleading and deceptive conduct which breaks relationship of trust between the lawyer and the testator from the outset unless of course he had the decency to inform the testator of the true state of the new relationship.

A lawyer would need as an absolute minimum (so as to not be engaging in false and misleading conduct, by misrepresenting himself and the legal profession, along with its perception of public trust to the person nominating the lawyer as an executor):

To introduce a clause within the will stating:

I the testator nominate Joe Blogs "Lawyer", and I am fully aware that when Joe Blogs becomes my executor Joe will no longer be a lawyer and I am now hiring him as an executor and he will no longer be bound by the Legal Professional Act of 2004 and that The Legal Services Commissioner will therefore not have the power to investigate any complaints brought against him by the beneficiaries of the estate.

**A far more effective solution would be for the legal professional act to bind lawyers who are acting as executors to it, by stating that even though they are executors they are deemed to be lawyers.**

## Law

Family inheritance law has been with humanity from the time we took our first steps on the planet. It is the fundamental root of all law. Its values and the way we administer it is a reflection upon our values as a society and how our society expects us to treat one another. It is bound up in moral and spiritual codes that bind us together as the human race.

Since Family Inheritance Law sits at the base of law, as people living in a contemporary democratic society we would expect the legal profession who are creating, practicing and administering these laws to be accountable to the families who are engaged in the law. We would expect the legal profession to develop, practice and administer these laws so as to preserve the value of inheritance in order that it can be preserved by future generations of families to utilise. We would not expect the legal profession to develop, practice and administer these laws in their own self-interest so as to enhance their own financial gain at the expense of future and present members of our families. We would expect the regulator of the legal profession (The Victorian Legal Services Commissioner) to act swiftly and decisively to eliminate any self-interested, unaccountable and untrustworthy behaviour by members of the legal profession.

## Law Reform

Our English adversarial system was spored from one of these acts of barbarism when William the Conqueror invaded Briton and defeated Harold at Hastings in 1066. From that time onward the laws of England favoured the conqueror above the families who had lived in the land. An adversarial legal system has a winner and a loser; it is not a system that seeks the truth, instead it is a system where two sides beat one another up with legal gobbledygook. The one with the most money and influence is normally declared the winner. The one without the influence and money loses. The adversarial system of law is practiced in The United States the United Kingdom and in Australia. It is a legal system that shapes every aspect of our lives including the way we

think as individuals. More often than not it impedes our ability to resolve problems collectively by dividing people and preventing them from coming up with a collaborative solution.

The people who run this system are lawyers. They create and shape the laws they interpret and administer the laws and they earn their livelihoods by practicing in the laws. Due to the barbaric heritage of the adversarial legal system and its sociological influence upon our society the lawyers never form, interpret or practice the laws in such a way as to diminish their own power and influence over our communities. In fact due to the nature of our adversarial system only those lawyers who are inclined towards barbaric acts succeed in the system and have influence in any law reform programmes. The progression of generational decline of our adversarial legal system in regards to its ability to service our community needs above the pockets of lawyers is now evident throughout the adversarial world. Our Attorney Generals who themselves must be lawyers continually tell us that they will improve access to justice for the general community.

The access the community wants and needs is a cheaper, more efficient and accurate system as is outlined in Annett Marfording's study which supports a truth seeking collaborative approach to our legal system instead of our current English adversarial system.

Civil Litigation in New South Wales:

Empirical and Analytical Comparisons with Germany Annette Marfording Ann Eyland.

Link to <http://law.bepress.com/cgi/viewcontent.cgi?article=1223&context=unswwps>

Refer pdf file marfording2a for review of the report

Year after year and decade after decade we see lawyers' fees rise and access to justice by the general community being further denied.

Why is there no law reform in this direction?

Answer. Simply because lawyers would make less money.

In other words our successive governments head lawyers have continued to allow a predatory gang of which they are members to continue to plunder in ever increasing amounts our communities our families and our children for their own greedy benefit.

The times when most of us encounter a lawyer are when we get into trouble, trouble with our marriage trouble with a car accident trouble with an injury trouble in business trouble with the police trouble with government regulation. We also require the services of a lawyer when if we buy a house, when we write a will and to be involved in probating a deceased estate.

Since the majority of us have realised that to lead a healthy and happy life, trouble is one thing we all know to avoid and with trouble comes a lawyer and with a lawyer comes expense and angst, both of which will diminish our experience of life and hurt our own family.

If we are lucky and avoid trouble we will encounter a lawyer when we purchase a home, sell a home, when we make a will or when a close relative dies. The problem with this model is that most people rarely see a lawyer and when encountering a lawyer assume they are all of good character and to be held in the highest of trusts because they are lawyers. Fortunately the majority of lawyers do work hard for their clients and do the best for their clients considering the limitations of our adversarial legal system. To work and survive within this system a lawyer must develop skills of combat, knowing, the greater the conflict and the longer the conflict the greater the cost to the parties funding the battle, the lawyers only objective being to win.

Funny about that I thought the law was their so as to avoid conflict and a lawyer was there to help formulate a resolution to the disagreement.

So I ask you would you entrust your life and the future destiny of your family into the hands of an individual who gets paid more and more money by inflating an existing conflict and by doing so makes you worse off and in doing so hurts your family.

Even an idiot would say no, and yet again and again like lambs to the slaughter individuals walk through those court doors with the destiny of their lives and the lives of their family at stake trusting lawyers, to the point where many older and more vulnerable people who have not had much to do with lawyers go ahead when writing their wills and bestow the ultimate trust in lawyers by making them executors of their estate when they die. In so doing and quite often without realising it they are placing the future of their families' destiny into the lawyer's hands.

Why does this happen. Because people trust lawyers, if lawyers were untrustworthy our government would do something about it and because our government has not done anything about untrustworthy lawyers and we are assured that lawyers are trustworthy.

## Our multicultural society and the impact of family inheritance law in Australia upon its development.

Our multicultural society has evolved as a result of worldwide events. These events have resulted in a large number of overseas families deciding that Australia is a good place to re-establish their families after social disruption including war, revolution and the breakdown of law and order within their countries of origin. These people often arrived in Australia with nothing apart from their lives and some of their family members. They then spend the remainder of their lives working hard in order to help their children establish their families in Australia. These families apart from overcoming language and cultural barriers are thrown in at the bottom of the socioeconomic ladder. Inheritance within those family structures plays a major role in their intergenerational development as it plays a major part in determining the schools we attend, the suburbs we live in, the ability of our family to pay for critical intervention services during our lives, and the holidays we spend together with our family. It influences the lives of our children our grandchildren and our offspring for eternity.

These families are particularly vulnerable to inheritance abuse by our current legal processing of inheritance matters.

- They are more likely to appoint a lawyer as an executor because they are deprived of an extended family network through the act of migration.
- They are less likely to have access to a permanent and trusted family lawyer.
- They will be unfamiliar with how the inheritance laws work within Australia and that because they have been constructed by lawyers in a nation that invented terra nullius are devoid of family input and fail to recognise the importance of healthy intergenerational family development through inheritance.

The inability of our legal regulators to tackle this issue is simply a disgrace. One has to ask why this is so. Particularly when we have all recognised that we are a nation of families many of whom have recently migrated to this land.

To see the problem one has to analyse the socioeconomic background of the legal profession. The majority of lawyers attend private schools which mean their families sit at the higher end of the social spectrum. The

families have more money are better educated and because they are educated and speak English their children inevitably have a greater chance of getting the marks that will allow them to become lawyers. The exercise is self-perpetuating and is an intergenerational transfer of legal power from one generation to the next within a confined social group. Due to the historical structure of this group of people who make up the majority of the legal profession, vested interest often dominates over social need when it comes to reforming our laws. The group itself can exert influence upon who will be given positions of influence and who will be excluded.

The legal profession currently has a serious conflict of interest by failing to develop a low cost efficient ,timely and truth seeking process to deal with inheritance matters and through its inactions impeding the intergenerational development of migrant families who have given up so much of their lives so as to re-establish their families in Australia.

## The Victorian Legal Services Commissioner

The Victorian Legal Services Commissioner is the entity that regulates the legal profession in Victoria.

Mr Michael McGarvie is the Chief Executive Officer of the legal services board.

Michael was appointed as CEO of the Board in December 2009. Prior to this, Michael was the CEO of the Supreme Court of Victoria for three years. Michael practised as a solicitor in a private firm for 23 years, where he primarily specialised in civil litigation and dispute resolution. The Board is the peak regulator of the legal profession in Victoria and is responsible for issuing and renewing practising certificates and maintaining the register of legal practitioners and register of disciplinary action.

Links <http://www.lsb.vic.gov.au/AboutTheBoard.htm> <http://www.lsb.vic.gov.au/>

Let me tell you a little story about Victoria's lawyers. There are 12,000 registered lawyers in Victoria. Half of these lawyers at least work in areas of the law where they cannot get into trouble with consumers of their services because they do not service the public. At least half if not 75% of the remaining lawyers say 4,500 are good hard working lawyers who provide a quality albeit expensive service. This leaves us with 1500 lawyers who in some way could cause concern to a consumer of their services. The Victorian Legal Services Commissioner receives 2,000 complaints per year and dismisses 1700 of these complaints, only disciplining the lawyers involved in 300 of these complaints. In other words the Victorian Legal Services Commissioner believes that on the whole lawyers are trustworthy and that 85% of complaints brought against lawyers by the public are without basis and that the public in regards to these complaints has no cause for concern. If the legal services commissioner is receiving his complaints from the public about the 1500 underperforming lawyers then that averages one complaint a year per lawyer. Remember for every complaint there are at least another three dissatisfied consumers who are either incapable of making a complaint due to language or educational barriers. There are consumers of their services who may feel dissatisfied but think this par for the course and there are other consumers who either cannot be bothered or who do not want to create a dispute with a lawyer who has done work for them because it is not in the long term interests of their relationship that they have with their lawyer.

So if you are lucky and well informed you most likely have a 90% chance of avoiding a bad lawyer but if you are just a general punter which means you take pot luck on the yellow pages you will discover that a large



percentage of the good lawyers are too busy to deal with you so you are left with approximately 50% of the good lawyers and 100% of the bad lawyers. The chances of ending up with a bad lawyer are increased to 40%. Remember when you need a lawyer the destiny of your life and that of your family are most likely at stake, particularly when it comes to inheritance and you are no longer there to ensure the lawyer can be trusted.

Older people who have migrated to Australia are particularly vulnerable as they do not have access to an extended family network from whom they can obtain advice on who are the lawyers to employ and who are the lawyers to avoid.

Unfortunately the situation gets even worse, for three reasons.

### **The first being.**

Lawyers who are acting as executors are deemed by the lawyer run regulator The Victorian Legal Services Commissioner Michael McGarvie, to be not acting as lawyers when acting as an executor of a deceased estate. Thus they are not bound by the legal professional act of 2004, and you thought you were making a lawyer an executor of your estate. Yes they were lawyers when sitting across the table from you when you were alive, but now that your dead and they have absolute control of your assets they are no longer lawyers, they are now executors and if they misbehave because they are not lawyers, the Victorian Legal Services Commissioner cannot discipline them. Personally I would say that this is one of the most severe and systemic examples of misleading and deceptive conduct under The Trade Practices Act that I have ever encountered but who would bring it to a court, where one of the lawyer gang (a judge) makes the final decision. Even bugs bunny has more survival skills than to enter this den of slaughter. A court were if the judge who is a lawyer sees his compatriot on the ropes has the power to tilt the ring in the lawyers favour and even pour oil beneath your feet in order to give his lawyer friend a helping hand.

If all else fails the Judge has the ability to adjourn proceedings so as to give the lawyer and the legal industry as a whole, time to arm up and increase the odds in their favour either by tilting the ring even further, pouring different lubricants under your feet or by bringing in an army of wigged and grounded experts with funny letters after their names like Q C or Special Council.

### **The second being:**

That lawyers who are in private practice are not bound by the Victorian Charter of Human Rights or for that matter any charter of human rights anywhere in the world.

What? They are not bound by a charter of human rights. Who are their clients? Dogs and cats! Not really they are human beings who are all joined to families which are made up of wives, children and relatives. All human beings, all who believe in their human rights and all who want and expect those rights to be respected and honoured by the law and those that create, administer and practice it, that is lawyers.

The Victorian Legal Services Commissioner has conducted a round table discussion with members representing the legal profession and three other groups to discuss Victoria's Succession laws. The report can be read in full by connecting to the following link. [http://www.lawyersorgraverobbers.com/web/wp-content/uploads/2012/03/LSC\\_SuccessionLawSummary13.pdf](http://www.lawyersorgraverobbers.com/web/wp-content/uploads/2012/03/LSC_SuccessionLawSummary13.pdf)

By reading this document it is plain to see that the lawyer dominated legal system has every intention of maintaining the inheritance laws as they currently exist that favour the plunder of family inheritance by the legal profession.

**The third being:**

That even when the Victorian Legal Services Commissioner is provided with the evidence to substantiate a complaint the commissioner has the power not to investigate the complaint. Refer letter from LSC. Pg 29

Similar issues are occurring between consumers of legal services in N S W and the New South Wales Legal Services Commissioner, Ref <http://www.smh.com.au/opinion/politics/keddies-saga-going-so-slowly-nowhere-20120223-1tqkr.html>

## A true story about the members of [REDACTED] and [REDACTED].

My own involvement with family inheritance law commenced soon after my mother's death.

In my own families situation we encountered a lawyer [REDACTED] and [REDACTED] the law firm [REDACTED], who were assisted by [REDACTED] resident wills and probate specialist [REDACTED]. Problems occurred from the outset in relation to communication.

My mother in her will had appointed one of my sisters and [REDACTED] the law firm at the time of her death to be executors. Her estate was to be split into four equal shares amongst her four children. One share that is my own share was placed into a discretionary trust a trust that could at the discretion of the trustees distribute all or part of the capital and all or part of the interest to any member of my own family including myself. The trust was set up upon the advice of [REDACTED] in order to protect my share of the estate from my trustees in bankruptcy. At no time was I ever a bankrupt or put into a position where I would be made bankrupt.

Since my share of the estate was not under any threat my sister along with my other brother and sister all agreed that the best course of action for my mother's family was to use her discretion as trustee and grant me all of the capital and all of the interest in the discretionary trust and hence split the estate equally as per the will.

The lawyer [REDACTED] supported by the law firm [REDACTED] [REDACTED] disagreed with the family and the family member executor on the interpretation of the will. [REDACTED] [REDACTED] stated [REDACTED] had in [REDACTED] possession a letter written to [REDACTED] by our mother six years prior to her death that supported [REDACTED] and [REDACTED] [REDACTED] interpretation of my mother's will. [REDACTED] stated there were other reasons apart from financial reasons as to why [REDACTED] would not release all of the capital and all of the interest from my share of the estate to me. When requested by the family and the family member executor for evidence [REDACTED] [REDACTED] stated the letter was privileged and withheld it from the family. After six years the letter has finally been revealed to the family by [REDACTED] [REDACTED] because [REDACTED] had retired and [REDACTED] was appointed as the new trustee.

As there were no other reasons stated by my mother in the contents of the letter, and [REDACTED] and [REDACTED] [REDACTED] had specified the letter as the evidence they held for the interpretation of my mother's will. One has to conclude that [REDACTED] [REDACTED] [REDACTED] engaged in conduct that gives rise to issues of breach of duty, deceit, misrepresentation, and false and misleading conduct. In other words they lied about or misconstrued its contents to the children of my mother and used that lie or misconception to bully and intimidate the family member executor not to join in the probate of the will. My mother specifically stated to [REDACTED] [REDACTED] [REDACTED] in her letter that

“they as lawyers act in conjunction with her daughter, my youngest sister, as none of her children had experience in wills or taxation law and that she understood that it can be a mine field.”

Instead [REDACTED] and [REDACTED] [REDACTED] set up a dispute with my sister (the family nominated executor) that was based upon conduct that gives rise to issues of breach of duty, deceit, misrepresentation, and false and misleading conduct. In other words a lie or a misconstruction created by them which they knew could not be verified. My sister refused to agree with their fabrication but [REDACTED] and [REDACTED] [REDACTED] then intimidated a grieving daughter with a fully loaded commitment to her own family into a position of submission, a position that bought about a nervous breakdown that prevented her from carrying out her role as executor of my mother`s estate. [REDACTED] and [REDACTED] [REDACTED] in fact betrayed the trust bestowed upon them as lawyers by my mother and broke her will. The result was catastrophic for the internal family relationships and severely eroded the value of the estate available for the beneficiaries to the amount of at least \$180,000 in excess fees and financial waste.

I initially questioned the Law Institute of Victoria and The Legal Services Commissioner about the right of [REDACTED] [REDACTED] to withhold the crucial letter and was informed that they were acting within the law. I then raised this matter with both the state and federal Attorney Generals without success. I asked the Attorney Generals what gave a lawyer the right to impose [REDACTED] will and interpretation of my mother`s wishes over that of all of her children without providing the evidence [REDACTED] held. Again I was met with explanations that did not extract the evidence.

I wrote a submission to the Queensland Law Reform Commission on Australian Uniform Ascendancy Laws suggesting a need to totally overhaul our process regarding inheritance laws.

I suggested:

- the power imbalance between a lawyer, executor and the family of the deceased needed to be changed so as to place the family in a dominant position.
- That the implementation of quality standards for lawyers who are acting as executors as was the case of [REDACTED] [REDACTED] was an essential requirement to prevent the plundering of family inheritance by lawyers.
- the need for compulsory training of lawyers who are acting as executors in matters of mediation and alternative dispute resolution.
- a cheaper and simpler way of sorting out inheritance matters with the use of non-lawyer run tribunals.

After writing so much I then wrote the book “Lawyers or Grave Robbers?” which poses the question. Are lawyers who act as executors acting as lawyers or are they just grave robbing? Hence the origin of this web site.

I then returned to The Victorian Legal Services Commissioner and informed her of the inheritance rights, family rights and human rights abuses that my mother`s family had endured through the actions of [REDACTED] [REDACTED] and [REDACTED].

I was informed that lawyers who act as executors are not bound by the Victorian Legal Professional Act 2004, and those lawyers in private practice are not bound by the Victorian Charter of Human Rights.

This is despite [REDACTED] [REDACTED] and [REDACTED] perpetuating the following inheritance rights family rights abuses upon me, my own family and my mother`s family.

**The Victorian Charter of Human Rights. Section 8:** Recognition and equality before the law.

- (1) Every person has the right to recognition as a person before the law.
- (2) Every person has the right to enjoy his or her human rights without discrimination.
- (3) Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination.

- (4) Measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

In this case [REDACTED] and [REDACTED] discriminated against my mother's children by not sharing the information they had with them, including her nominated family representative. Their sentiment goes as follows: I am a lawyer thus I have a right that empowers me over you because of my position as a lawyer.

In our families case, [REDACTED] and [REDACTED] disagreed with the family and were permitted to further empower themselves over the family and break the contract of trust imparted to them with our late mother through her will by bullying and intimidating the family member executor to not participate in probate whilst perpetuating a lie or a misconception, thus discriminating against the whole of the family. Discrimination occurs when one group in the culture is far more powerful than the group it exploits, as the whites in Africa exploited and discriminated against the blacks. Discrimination and empowerment of a privileged cartel are the twin sisters of racism.

It is universally knowledge that inheritance inequity is one of the main drivers of discrimination between family members which leads to the destruction of extended family networks. This process impedes upon those families development in Australia, and will impact upon migrant families more severely than the established population due to their paucity in extended family networks who are supportive at times of death in their home nations but have often been replaced by lawyers in Australia.

Because the Victorian Legal Services Commissioner is aware of this discrimination against a less powerful group within Victoria that are prone to discrimination by lawyers like [REDACTED] and [REDACTED] who act as executors or deal in deceased estates matters the Victorian Legal Services Commissioner is bound to act upon the problem so as these human rights abuses stop.

**The Victorian Charter of Human Rights. 13: Privacy and reputation**

A person has the right not to have his or her —

- (a) privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) reputation unlawfully attacked.

Reputation is founded upon inter family relationships, the way inheritance is distributed between a parent and child will go to the core of an individual's reputation. Reputation is affected both internally and externally. Our reputation is how we see ourselves and how others see us; our reputation is formed through an accumulation of our historical actions. How children's reputations are created begins with their relationships within their families. Within my own mother's family through its understanding of its relationships, made a decision on how our mother's will should be interpreted, based upon their recognition of each and every bodies understanding of their reputation and that of our family. [REDACTED] after being told how their actions would adversely impact upon that reputation of the family and of the individuals who make up the family, still chose to ignore the requests from all members of my mother's family or provide the evidence that [REDACTED] stated they had to support their actions. [REDACTED] did not allow for the family to interpret the information or to discuss an equitable resolution. Instead [REDACTED] recommended the removal of the family member executor, thus breaking the contract of the will.

The Victorian Legal Services Commissioner's failure to act on his knowledge of the above events unlawfully supports an attack on my own reputation and that of our family.

**The Victorian Charter of Human Rights. 15:** Freedom of expression

- (1) Every person has the right to hold an opinion without interference.
- (2) Every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether—
  - (a) orally; or
  - (b) in writing; or
  - (c) in print; or
  - (d) by way of art; or
  - (e) in another medium chosen by him or her.
- (3) Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary—
  - (a) to respect the rights and reputation of other persons; or
  - (b) for the protection of national security, public order, public health or public morality.

The relevant section is “the right to hold an opinion without interference”. To hold an opinion requires information in order to substantiate ones position. The ability to have an opinion and how the opinion is formed begins before birth and transcends to death. Opinions are formed in the beginning through inter family interaction. So to hold an opinion about a family matter goes to the core of one’s development.

The members of the law firm [REDACTED] and [REDACTED] have denied a family, information that was openly assessable when my mother was alive, to allow her children to form an opinion of what her last wishes were. The actions of [REDACTED] [REDACTED] and [REDACTED] have denied my family to hold an opinion about one of the closest elements that families have, which is the transfer of inheritance from one generation to the next; the transfer of inheritance incorporates the life time history of a family unit. It displays the trust between parent and child and the trust between the children and that parent. When those trusts are interfered with by an outside member of the family without reasonable explanation and the equality of inheritance distribution is changed, the fine balance of trust can be shattered, as is the case with my mother’s family.

**The Victorian Charter of Human Rights. 17:** Protection of families and children

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.
- (2) Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child.

Families are the fundamental group unit of society and are entitled to be protected by society and the State [refer to the above points under sections 8, 13 and 15].

Considering the following points of fact:

- [REDACTED] [REDACTED] and [REDACTED] failed to show evidence of their position when asked.
- After six years with a change of trustees from [REDACTED] to [REDACTED], [REDACTED] [REDACTED] finally produced the evidence that should have been forthcoming when my sister, the family nominated executor requested it.

- This evidence proves that [REDACTED] conduct gave rise to issues of breach of duty, deceit, misrepresentation, and false and misleading conduct. In other words, lied to or deceived the children of their dead mother about her final wishes and was supported by the law firm [REDACTED].
- [REDACTED] [REDACTED] and [REDACTED] bullied and intimidated the family member executor to resign based upon conduct that gives rise to issues of breach of duty, deceit, misrepresentation, and false and misleading conduct.
- [REDACTED] [REDACTED] and [REDACTED] were told by all members of the family, one a medical practitioner and the other a trained psychologist that their actions would damage the family and the value of the inheritance at their own financial gain.
- [REDACTED] [REDACTED] and [REDACTED] broke the fiduciary trust bestowed upon them by my mother when they misconstrued important information to my sister and my mother's children regarding their mother's wishes and refused to work in conjunction with my sister and my mother's children as my mother had requested of them in the letter..
- By doing so [REDACTED] [REDACTED] and [REDACTED] broke contract of the will.
- [REDACTED] [REDACTED] and [REDACTED] destroyed the interpersonal relations between my mother's children.
- [REDACTED] [REDACTED] and [REDACTED] through poor administration and unnecessary legal fees denied my mother's children at least \$180,000 in the value of their inheritance.

This is a true example of an inheritance rights abuse by an Australian lawyer [REDACTED] and [REDACTED] law firm [REDACTED]. It is also a family rights abuse and a human rights abuse by an Australian lawyer [REDACTED] and [REDACTED].

The lawyer [REDACTED] who assumed the role of executor from [REDACTED] [REDACTED] has not provided any proof that [REDACTED] has taken part in any up to date training in conflict resolution.

An employee of the law firm [REDACTED], [REDACTED] openly admitted during a telephone conversation that as lawyers they did not work with quality standards when dealing with deceased estates.

The Victorian Legal Services Commissioner has not implemented mandatory training for lawyers who act as executors or implemented mandatory standards by which they operate incorporating section 17 of The Victorian Charter of Human Rights. Due to the fact that the Victorian Legal Services Commissioner is aware of many instances within Victoria involving the legal profession and the human rights abuses of families by them when dealing with deceased estates and has not acted to incorporate section 17 of the Victorian Charter of Human Rights to guide their activities, this lack of action is itself an abuse of Victorians Human Rights, particularly when you consider the amount of money that is currently available for exploitation by unaccountable self-serving lawyers.

### **The Victorian Charter of Human Rights.**

#### **19: Cultural rights**

- (1) All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.
- (2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—
  - (a) to enjoy their identity and culture; and
  - (b) to maintain and use their language; and

- (c) to maintain their kinship ties; and
- (d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

The relevant section is 'cultural rights to maintain their kinship ties'. The Charter states that this section is only applicable to Aboriginal people. I suggest that from an ethical perspective the Victorian Legal Services Commissioner should act on behalf of every ethnicity in our multicultural society and are bound by the Victorian Charter of Human Rights in my case as with many migrant Victorians who although not aboriginal, understand the imperative of kinship, each family arriving in Australia being limited in kin to their immediate family. Destruction of those kinships through adversarial legal tactics that only benefit self-serving unaccountable lawyers when dealing with deceased estates is an abuse of those families' kinship rights.

**The Victorian Charter of Human Rights. 20: Property rights.**

A person must not be deprived of his or her property other than in accordance with law.

Again I state that The Victorian legal Services Commissioner is bound to act in my case as with many other Victorians who are introduced to an expensive, often unaccountable and lengthy legal process when encountering a deceased estate, a process that directs large amount of property away from the people who are entitled to it and into the hands of a powerful and select group within our state.

**The Victorian Charter of Human Rights. 24: Fair hearing**

A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

What fairer hearing than to have all of one`s children decide the destiny of your family based upon the truth Instead of lawyers such as [REDACTED] [REDACTED] and [REDACTED] who have broken the trust bestowed upon them by engaging in conduct that gave rise to issues of breach of duty, deceit, misrepresentation, and false and misleading conduct.

[REDACTED] [REDACTED] [REDACTED]

The persons named as executors named In the Supreme Court of Victoria Probate Jurisdiction, in the will of [REDACTED] are:

[REDACTED] of [REDACTED] named as executor with leave being reserved to (my sister) and the following members of [REDACTED]. [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

**Lawyers or Grave Robbers? The Book**

So bad was my own families experience with Australian Succession law that I wrote a book. You are quite free to obtain a copy of this book and use it as reference material as it contains a great deal of information about this area of law from the perspective of Australian Families.

Lawyers or Grave Robbers? Is a book that poses an important question about our legal profession when administering deceased estates and inheritance issues? The book asks the reader to consider whether or not some lawyers are behaving as grave robbers rather than as lawyers. The book exposes the failings of a law firm [REDACTED] and [REDACTED] in managing my late mother`s estate.

<http://www.theage.com.au/news/national/call-for-probate-overhaul/2005/09/24/1126982270134.html>

Lawyers or Grave Robbers? Gives an accurate and blow by blow description of how a lawyer as an executor and a law firm can plunder a families inheritance. The book describes the efforts of the family to prevent this plunder and exposes the inability of the legal regulators that is the Law Institute of Victoria, The Legal Services Ombudsman, The Legal Services Commissioner and the Attorney Generals to intervene.

<http://www.theage.com.au/national/nail-in-coffin-for-greedy-lawyers-20081206-6sx9.html>

Lawyers or Grave Robbers? Is an informative book and an educational tool for anyone who will have to deal with the legal profession in regards to Family Inheritance Law as it details the methods used by [REDACTED] and [REDACTED] to plunder a deceased estate and destroy an Australian family, methods such as creating disputes through their own dishonesty in order to ensure more written correspondence between lawyers.

Lawyers or Grave Robbers? Proposes some essential reforms that are desperately required to Australian family inheritance law so as to stop this plunder of Australian family inheritance by our legal profession and enhance our beautiful and youthful nation.

### **The Introduction. The grizzly truth**

Describes the origins of today`s family inheritance law within Australia and why it has left Australian families exposed to the plunder of their inheritance by greedy and unaccountable lawyers and law firms like [REDACTED] and [REDACTED].

### **The lawyer sets the trap**

Describes how a lawyer when writing a will for a client can set an inheritance trap. If the will is written ambiguously without supporting documentation of the deceased`s intentions that can be accessed by all of the deceased`s children it gives a lawyer who is also an executor the ability to spring the trap after the client is dead.

### **The lawyer robs the grave**

This chapter shows how [REDACTED] and [REDACTED] were able to create a dispute that did not exist and through that dispute were able to charge the estate an exorbitant sum of money in unnecessary legal fees.

### **The impotent regulators**

The exposure on how legal regulators do not regulate unaccountable self-serving lawyers like [REDACTED] and [REDACTED] law firm [REDACTED].

### **The government spectators.**

This chapter illustrates the ambivalence shown by our government towards Australian families who are seeing their rightful inheritance being plundered by lawyers, who are working in a broken system that does not respect the well-being of these families.

### **The way forward: Quality control for lawyers**

Proposes the changes that are needed to our family inheritance law which would ensure Australian families Inheritance was protected during the transfer phase from self-serving and unaccountable lawyers.



**Those with power win**

Gives 26 examples of how [REDACTED] and the [REDACTED] law firm [REDACTED] used their legal power as lawyers to brutalise my mother's estate and her family's inheritance rights.

**7. A legal system out of touch out of time**

Our adversarial legal system has originated from William the Conqueror. Its origins are from barbarism and not from community. The laws emanate from a principal of 'rule over', rather than one of being generated by community. This is very clear when the actions of [REDACTED] and [REDACTED], executors of my mother's estate are seen for what they are. Laws, which [REDACTED] and [REDACTED] have applied over the requests, by a living and functional family, to benefit [REDACTED] and [REDACTED] law firm [REDACTED] through increased fees and charges. Laws condoned, by the regulators of the legal profession. They are laws emanating from barbarism; laws that support the destruction of productive harmonious communities made up of families. Laws that condone "grave robbing".

**Click Here to Buy The Book**

<http://www.amazon.com/Lawyers-Grave-Robbers-Diarmuid-Hannigan/dp/1453701826>

**About the web site: [www.lawyersorgraverobbers.com](http://www.lawyersorgraverobbers.com)**

[www.lawyersorgraverobbers.com](http://www.lawyersorgraverobbers.com) is a web site that also possesses the same question. Are lawyers who are acting as executors behaving as lawyers or are they behaving as grave robbers? But a far more poignant question arises. Is the legal profession honouring its duty to our community with regards to family inheritance law in Australia or is it dishonouring that duty in the interests of its own financial gain?

When one quantifies the dishonesty, waste and inefficiency created by [REDACTED] and [REDACTED] that is detailed in Lawyers or Grave Robbers? and expand that problem throughout the inheritance industry one becomes aware of the magnitude of wealth that is being plundered from Australian families by an out-dated inefficient and expensive legal process. It is a legal process developed, administered and run by lawyers whose own interests are best served by maintaining the status quo.

The web site [www.lawyersorgraverobbers.com](http://www.lawyersorgraverobbers.com) will provide more information to our community about the issues pertaining to family inheritance law. It is an opportunity to bring together all parts of our society who are concerned with the lack of progress in this important area of law reform, to create public awareness of how the current system supports a self-serving elite, and to address this inequality in order that our governments become responsible to Australian families and stop lawyers from plundering our family inheritance.

Lawyers or Grave Robbers? contains a series of correspondence between myself and The State and Federal Attorney Generals, The Victorian Ombudsman, and the Victorian Legal Services Commissioner. Through this correspondence the reader realises the indifference shown by these government structures to the importance of preserving family inheritance in favour of the family. It exposes a serious flaw that currently exists in family inheritance law that permits a lawyer such as, [REDACTED] and a law firm [REDACTED] to obtain power over a family inheritance by lying about and concealing specific information relating to their mothers wishes from the children of the deceased.

It illustrates how these legally dominated government structures are ignoring the significance of family, and the power of living family members to determine and resolve their own inheritance disagreements. It exposes

the refusal by these government structures to alter the current power imbalance between a lawyer, executor and a family which is currently lawyer dominated. In other words there is no balance, there is only the lawyer.

It exposes how these lawyer run government structures support unaccountable self-serving dishonest lawyers by failing to act through legislation so as to curb their plunder of Australian's family inheritance.

It exposes how the legal services profession is in serious conflict with the Trade Practices Act in regards to misleading and deceptive conduct because lawyers who are nominated by their clients are presumed at the time to be lawyers. When under the law when they become executives they are no longer lawyers and are not bound by the Legal Professional act of the jurisdiction that they act in.

## The evidence.

1. My response to Letter received from The Victorian Legal Services Commissioner Dated 26 02 2012.
2. Letter received from The Victorian Legal Services Commissioner after my response. Dated 20 02 2012
3. My response to Letter received from the Victorian Legal Services Commissioner. Dated 25 01 2012.
4. Letter received from The Victorian Legal Services Commissioner after submitting evidence that [REDACTED] and [REDACTED] engaged in conduct that gave rise to issues of breach of duty, deceit, misrepresentation, and false and misleading conduct, in other words lied to the children of my dead mother. Dated 25 01 2012
5. Response from the Victorian Attorney General to Our Society must protect the wishes of the dead. Dated 14 12 2011
6. Our government must protect the wishes of the dead Part one and two, an open letter to every member of the Victorian Parliament. Dated 01 04 2011
7. Letter received from The Victorian Ombudsman after submitting evidence that [REDACTED] and [REDACTED] law firm [REDACTED] lied to or misconstrued important information to the children of my dead mother about her wishes. Dated 19 10 11
8. Submission to the Victorian Governments review on The Victorian Charter of Human Rights concerning lawyers in private practice not been bound by this charter. Dated 05 05 2011  
Link:  
[http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter\\_review/submissions/09\\_-\\_Hannigan\\_Diarmuid\\_1\\_23.5.2011.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/submissions/09_-_Hannigan_Diarmuid_1_23.5.2011.pdf)
9. Working Families, Denied Natural Justice is an open letter that responds to the legal services commissioner's statement that lawyers in private practice are not bound by the Victorian Charter of Human Rights and is available on the following link . Dated 16 05 2010  
[http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter\\_review/submissions/09\\_Attach\\_A\\_23.5.2011\\_.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/submissions/09_Attach_A_23.5.2011_.pdf)
10. Letter from the Victorian Legal Services Commissioner stating that lawyers who are in private practice are not bound by the Victorian Charter of Human Rights. Dated 14 January 2011
11. Letter from The Victorian Ombudsman in response to a request for his copy of a report he carried out on The Victorian Legal Services Commissioner. Dated 23 02 2010
12. Letter to the Victorian Ombudsman requesting a copy of his report on the legal services commissioner. Dated 16 02 2010.

### EVIDENCE 1:

My response to Letter received from The Victorian Legal Services Commissioner Dated 26 02 2012.

Diarmuid Hannigan

[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

Sunday 26<sup>th</sup> February 2012

To Mr Michael McGarvie  
The Victorian Legal Services Commissioner

Your reference No LSC /09/2054

Dear Michael

In response to your letter 20<sup>th</sup> February 2012

Re: Complaint against [Redacted] and [Redacted] [Redacted] at the time of my mother's death and [Redacted] who was employed by [Redacted].

The Members of [Redacted] at the time of my mother's death as specified in the probate documents submitted to the supreme court of Victoria were: [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted].

Please note my complaint is against both [Redacted] [Redacted] and also [Redacted] who was employed by [Redacted] and [Redacted] not just [Redacted] [Redacted].

You have stated that The Legal Services Commissioner can only investigate individual lawyers not law firms. So I have given you the names of the individual lawyers. I apologise for my inadvertent error.

In my letter to you dated 01 01 2012 pg 4 and 5 I indicate to you where [Redacted], [Redacted] [Redacted] [Redacted] and [Redacted] have a problem with regards to your office and breaching of the Legal Professional Act of 2004.

It appears as if we have a failure in communication mainly because your office has not as yet provided the facility of a face to face meeting and all communication has been carried out in writing.

I will attempt to re communicate so as you may be able to understand where the problems lie.

**Part one.**

1. A meeting was held between [Redacted], my sister [Redacted], her husband [Redacted], my sister [Redacted], her husband [Redacted] and my brother [Redacted] also attended by [Redacted] an employee of [Redacted] at the offices of [Redacted] to discuss my share of the estate.

- At that time my sister [Redacted] was the family nominated executor.
- At that time [Redacted] [Redacted] were the other possible nominated executors.

- At that time [REDACTED] was representing the nominated executors of [REDACTED] and [REDACTED] [REDACTED] the employee of [REDACTED] was representing all of the executors of the will including my sister and also the estate.

An issue occurred when [REDACTED] referred to the contents contained within a letter my mother had written to [REDACTED] whilst [REDACTED] was my mother's lawyer which set [REDACTED] against the family. [REDACTED] stated that there were other reasons as to why [REDACTED] could not treat my inheritance in the same way as my brothers and sisters because of the information contained in the letter. When the letter finally came to light (The new evidence) it clearly shows that the only reason I should be treated differently pertained to my death, whereby my share of the estate was to go to my children and not to my wife even though when I was alive she had an option to request all or part of the capital and all or part of the interest along with any other member of my direct family. Since I am not dead this means that [REDACTED] behaviour raises issues of breach of duty and misrepresentation.

[REDACTED] as [REDACTED], [REDACTED] [REDACTED] and [REDACTED] legal representative should have alerted all of the executors to the issues of breach of duty and misrepresentation, at that point in time since they were all of [REDACTED] clients. [REDACTED] did not notify [REDACTED] of the issues of breach of duty, deceit, misrepresentation, and false and misleading conduct made by [REDACTED].

[REDACTED] is an individual lawyer who was acting as a lawyer and was employed by the law firm [REDACTED] [REDACTED]. This means that [REDACTED] [REDACTED] are vicariously liable for [REDACTED] failure to notify [REDACTED] other client [REDACTED] of [REDACTED] of breach of duty, and misrepresentation. Since [REDACTED] [REDACTED] were all named as executors to my mother's will their failure to ensure that one of their employees acted within the guidelines of the legal professional act of 2004 is a breach of their fiduciary duty to my mother and to her estate, in other words her family.

2. My sister [REDACTED] requested a copy of the letter that [REDACTED] maintained [REDACTED] had in [REDACTED] possession but was refused on the grounds of legal client privilege. I gather that if she had taken up her position as executor after the granting of probate [REDACTED] would have been obligated to provide her with a copy of the letter. This means that although she was the family nominated executor who had stepped into the shoes of my mother she was denied access to the information by the other executor on the grounds that she had not yet achieved the position of executor. Following that argument it would also mean that [REDACTED] and [REDACTED] [REDACTED] had also not achieved the position of executor and were therefore not executors. If they were not executors at that time because, my sister was not an executor then they must have been lawyers.
3. The letter that my sister [REDACTED] requested from [REDACTED] was in fact not privileged because when [REDACTED] became the new trustee [REDACTED] released the letter or did [REDACTED] just make another error. The error of releasing privileged information without authority from the court.

## Part 2

You state: "that you do not agree that the evidence proves what you suggest."

Please can you state the reasons as to why you do not agree that the evidence and the facts I have provided do not prove:

- that [REDACTED] behaviour created issues of breach of duty and misrepresentation.

- that [REDACTED] did not investigate the issues of breach of duty and misrepresentation on behalf of his other clients including [REDACTED]. Particularly when [REDACTED] was fully aware of the damage an unequal distribution of inheritance would do to the fabric of my mother's estate and to the relationships between her children. I do not know if [REDACTED] had access to the letter but since it became an important issue in determining the direction of the estate as the lawyer acting in the interests of the estate I would have thought that if [REDACTED] were competent in [REDACTED] duties as a lawyer to the estate [REDACTED] would have at least read the letter. Since I am not privy to [REDACTED] file I do not know what [REDACTED] did or did not do and that is the reason we have investigators as per your office of the Victorian Legal Services Commissioner so as we can discover whether or not lawyers are doing their jobs properly.
- that [REDACTED] and [REDACTED] [REDACTED] made a disastrous mistake in allowing [REDACTED] to hide an important piece of information that would have helped to determine my mother's wishes from her children under the pretext of legal client privilege, when in fact it was not privileged information.

### Part 3

You have failed to address and explain the following as communicated to you in my letter of 29 01 2012 and as a member of the public I would appreciate a professionally composed response that addresses the issue of the evidence not the issue of law firms or lawyers who are acting as executors are not bound by the legal professional act. This question asks you why you have rejected the evidence.

In response to your letter of 25 01 2012. You state.

"In this case, I note that you have provided me with a copy of your late mother's letter to [REDACTED] dated 30 October 1998. Whilst the letter itself is a document that I have not previously had an opportunity to consider, the contents of same do not provide me with any new information which would allow me to re-open the complaint."

Could you please explain to me why the contents of the letter which prove [REDACTED] and [REDACTED] engaged in issues of breach of duty and misrepresentation to the children of the deceased including my mother's nominated executor [REDACTED] and therefore acted in a dishonest manner and breached their fiduciary duty is insufficient reason for you to investigate my complaint in a transparent and thorough manner?

I look forward to you reply.

Yours Sincerely

Diarmuid Hannigan

EVIDENCE 2:

# COMMISSIONER

Letter received from The Victorian Legal  
submitting evidence that [REDACTED]  
2012

Services Commissioner after  
lied to the children of my dead mother. Dated 25 01

## Legal Services

Your ref:

Our ref: LSC/09/2054  
[REDACTED]

9/330 Collins St Melbourne VIC 3000  
GPO Box 492 Melbourne Vic 3001 DX 185 Melbourne  
t 1300 796 344 (local call) t 03 9679 8001 f 03 9679 8101  
[www.lsc.vic.gov.au](http://www.lsc.vic.gov.au) ABN 66 489 344 310

20 February 2012 **Private and**

**Confidential**

Mr Diarmuid Hannigan  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EVIDENCE 3:

My response to Letter received from the Victorian Legal Services Commissioner 25 01 2012.

Diarmuid Hannigan

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Sunday 29<sup>th</sup> January 2012

To Mr Michael McGarvie  
The Victorian Legal Services Commissioner

Your reference No LSC /09/2054

Dear Michael

Re: Complaint against [REDACTED] and [REDACTED]. Please note my complaint is against both [REDACTED] and [REDACTED] not [REDACTED] of [REDACTED]. Your error in this statement clearly shows that you have not considered the matter of the new evidence in light of the actions of the law firm [REDACTED] and have missed the implications of this new evidence in relation to the law firm [REDACTED] actions in this matter.

In response to your letter of 25 01 2012. You state.

“In this case, I note that you have provided me with a copy of your late mother's letter to [REDACTED] dated 30 October 1998. Whilst the letter itself is a document that I have not previously had an opportunity to consider, the contents of same do not provide me with any new information which would allow me to re-open the complaint.”

Could you please explain to me why the contents of the letter which prove [REDACTED] and [REDACTED] lied to the children of the deceased including my mother's nominated executor [REDACTED] and therefore acted in a dishonest manner and breached their fiduciary duty is insufficient reason for you to investigate my complaint in a transparent and thorough manner.

Yours Sincerely

Diarmuid Hannigan

Delegate of the -  
**Legal Services Commissioner**

EVIDENCE 4:

Letter received from The Victorian Legal Services Commissioner after submitting evidence that [REDACTED] and [REDACTED] misconstrued important information or lied to the children of my dead mother.  
Dated 25 01 2012

Legal Services **COMMISSIONER**

Your ref:

Our ref: LSC/09/2054  
[REDACTED]

9/330 Collins St Melbourne VIC 3000  
GPO Box 492 Melbourne Vic 3001 DX 185 Melbourne  
t 1300 796 344 (local call) t 03 9679 8001 f 03 9679 8101  
[www.lsc.vic.gov.au](http://www.lsc.vic.gov.au) ABN 66 489 344 310

25 January 2012

**Private and Confidential**

Mr Diarmuid Hannigan  
[REDACTED]

Dear Mr Hannigan

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

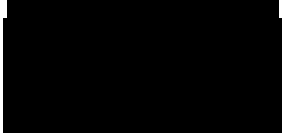
[REDACTED]



Level 9, 459 Collins Street (North Tower)  
Melbourne Victoria 3000  
Telephone 03 9613 6222

Toll Free 1800 806 314 (regional only)  
Fax 03 9614 0246  
Email [ombudviclaDombudsman.vic.gov.au](mailto:ombudviclaDombudsman.vic.gov.au)  
Website [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

Yours sincerely



**Legal Services Commissioner**

EVIDENCE 5:

Response from the Victorian Attorney General to Our Society must protect the wishes of the dead.  
Dated 14 12 2011



**Attorney-General**

121 Exhibition Street  
Melbourne Victoria 3000  
GPO Box 123  
Melbourne Victoria 3001  
Telephone: (03) 8684 1111  
Facsimile: (03) 8684 1100  
DX 210220

Mr Diarmuid Hannigan  
[REDACTED]

Dear Mr Hannigan

**Legal practitioners acting as executors**

I am writing in relation to your letter to Victorian Members of Parliament regarding your concerns about legal practitioners acting as executors of deceased estates. A number of Members of Parliament have also referred your letter to me for consideration.

You have raised a number of issues in your correspondence about the conduct of legal practitioners and the operation of the bodies that regulate the legal profession. From the details you have provided, I appreciate that this has been a difficult matter for you and has had a lasting impact on your family. However, it would not be appropriate for me to intervene in the particular circumstances of your complaint, which has been considered and reviewed by the Legal Services Commissioner (the Commissioner) and the Ombudsman, both independent statutory bodies.

I do note, however, that your letter suggests that you now have further information that goes to your complaint of professional misconduct by the legal practitioner executor of your mother's estate. It appears that you have provided this new information to the Ombudsman but may not have raised it with the Commissioner. The Commissioner has a discretion to consider a complaint made outside of the legislative six year time limit. In the case of new evidence, it is my understanding that any new information would need to be compelling and have not been considered in any previous investigation.

I would also like to respond to some more general issues raised in your letter. You are concerned that a

legal practitioner who is acting in the role of executor is not bound by the *Legal Profession Act 2004*. This is because the legislation makes a distinction between a legal practitioner who is doing legal work and a legal practitioner who is carrying out the role of an executor under a will.

An executor's role is to carry out the terms of the will. Through the probate and administration process, executors, whether legal practitioners or not, are supervised by the Supreme Court. Where an executor engages a legal practitioner to assist with the administration of an estate, the legal practitioner's main responsibilities are to the executor whose instructions he or she must follow provided they are in accordance with the will. Where a legal practitioner has been appointed as an executor, he or she may also do the legal work associated with administration.

Legal practitioners are regulated by the Legal Profession Act in relation to their legal work and their professional conduct more generally. Under the Act, the Commissioner is able to investigate the conduct of legal practitioner executors where the conduct relates to their legal work. Conduct that may constitute unsatisfactory professional conduct or professional misconduct includes charging excessive costs or contravening professional conduct rules. The Commissioner can also investigate serious misconduct that occurs outside of legal practice that would justify a finding that the practitioner is not a fit and proper person to engage in legal practice or that would be reasonably regarded as disgraceful or dishonourable to the profession. Further, beneficiaries under a will can complain to the Commissioner about legal costs (not exceeding \$25,000) charged for legal services relating to the will.

The Commissioner also has a mandated role to educate the legal profession about issues of concern to the profession and to consumers of legal services, and to educate the community about legal issues and the rights and obligations that flow from the client-practitioner relationship. I understand that over the past 12 months, the Commissioner has conducted a number of seminars and workshops with the profession regarding client and practitioner problems in the area of succession law. In that same time, the Law Institute of Victoria, the peak professional association for solicitors in Victoria, has also taken active steps to educate the profession about acting as an executor and charging commission.

You have also made a number of suggestions for ensuring greater 'quality control' of legal practitioners acting as executors.

In relation to legal profession regulation, the Government has decided to implement the Legal Profession National Law. The National Law will regulate the profession across participating jurisdictions and will replace existing State and Territory legislation, including the Legal Profession Act in Victoria. The National Law will establish the National Legal Services Board and National Legal Services Commissioner (National Commissioner) and is expected to commence in 2013. The National Law will continue to allow complaints to be made to the State and Territory representatives of the National Commissioner about unsatisfactory professional conduct and professional misconduct. State and Territory representatives of the National Commissioner will also be empowered to deal with broader consumer matters and service disputes that do not warrant disciplinary attention.

In relation to succession law reform, the Government is currently considering the recommendations arising out of the National Succession Laws Project, sponsored by the Standing Committee of Attorneys-General, which has reviewed laws across Australia relating to wills, family provision, intestacy and the administration of deceased estates. While the Government is currently focused on implementing the commitments it made as part of the 2010 State election, consideration will be given to including Victoria's succession laws as part of the Government's future reform program. Your comments and experiences are therefore appreciated and will be considered as part of any future reform of succession laws in Victoria.

Yours, sincerely

**ROBERT CLARK MP**  
Attorney-General

EVIDENCE 6:

Our government must protect the wishes of the dead Part one and two, an open letter to every member of the Victorian Parliament. Dated 01 04 2011

### **OUR GOVERNMENT MUST PROTECT THE WISHES OF THE DEAD (Part two)**

Diarmuid Hannigan

██████████  
████████████████████  
██████████  
████████████████

Tuesday 1<sup>st</sup> April 2011

Dear Member

Thank you for receiving my letter headed "Our society must protect the wishes of the dead".

I am forwarding you a copy of The Victorian Ombudsman's response to concerns I raised with him concerning the inaction of The Legal Services Commissioner to deal with complaints I have raised regarding the way ██████████ and ██████████ have managed my late mothers estate.

In my response to the Ombudsman I included new evidence. A letter from my mother to ██████████ the lawyer executor which proves ██████████ lied to my dead mothers children about her wishes. This letter was denied to my mother's family by ██████████ her former solicitor and the executor on the grounds of legal client privilege.

██████████ and ██████████ lied about the contents of the letter to my sister the family member executor and to her other children. This lie resulted in ██████████ of ██████████ getting full control of the estate.

The consequences of this dishonest action by ██████████ and ██████████ were financially and emotionally disastrous for the beneficiaries of the estate, a total of 14 innocent Victorians comprising of three independent families.

In my response to the Victorian Ombudsman I included a copy of the letter and a detailed document based submission showing where ██████████ and ██████████ had lied in writing on at least three occasions. I also included three statutory declarations from three of the beneficiaries who had met directly with ██████████ and ██████████ ██████████ showing that they had been lied to regarding the contents of the letter.

The Ombudsman's response is based upon an investigation into my original correspondence with his office which did not include the new evidence, since I had not come by it.

The response by the Ombudsman's office does not take into consideration the new evidence and the fact that if The Legal Services Commissioner had the jurisdiction to investigate lawyers who act as executors, as lawyers he would have discovered the lie conceived by [REDACTED] and concealed to my mother's children by [REDACTED].

In my response to The Victorian Ombudsman I requested that his office approach The Victorian Legal Services Commissioner on my behalf and based upon the new evidence request his office to re-investigate my complaint against [REDACTED] and [REDACTED].

When considering the context of the Victorian Ombudsman's reply and the suggestion by the Ombudsman that I should contact a lawyer and pursue the matter through the Supreme Court it appears as if he has failed to consider this request.

The failure by The Victorian Ombudsman to acknowledge this request is a matter for concern. Concern due to the weight of evidence placed in front of the Victorian Ombudsman and concern due to the gravity of the situation, as is explained in my previous letter (Our society must protect the wishes of the dead). The option put forward by the Victorian Ombudsman to utilise the Supreme Court is an entirely different form of dealing with the matter instead of a proper investigation by the regulator.

If the matter were dealt with by the Supreme Court it would be conducted within the adversarial legal system. [REDACTED] and [REDACTED] would defend the fact that they had behaved in a dishonest manner and with the use of legal skulduggery and their superior resources would exhaust their opponent's resources. In other words the truth and my dead mother's wishes would be abandoned in a battle between a legal philistine ([REDACTED]) and me. It would in fact be an exercise in futility bordering upon madness.

If the matter were investigated by the Legal Services Commissioner and the investigation was carried out in an open and transparent manner with all parties being privy to the information then [REDACTED] [REDACTED] would have to explain their support of the lie and the executor [REDACTED] would have to explain why [REDACTED] lied.

The investigation by the Legal Services Commissioner from the public perspective is in the interests of consumers of legal services whereas the Supreme Court alternative is, grossly and unfairly in favour of the lawyers.

Considering the serious issues at stake for our community development and it's need to have ultimate trust in the legal profession when dealing with succession law, an investigative approach to these types of problems, would be more favourable in enhancing, positive community development. An investigative approach would identify the reasons for the dishonest behaviour by [REDACTED] and [REDACTED]. By identifying the cause of the behaviour the regulator would then be able to work with the legal profession so as to build systems that would prevent this type of behaviour from reoccurring. These actions by the Victorian legal Services Commissioner would lead to an improvement of services provided by lawyers to the community when dealing with inheritance and would reduce the chances of the legal profession being bought into disrepute by the dishonest actions of some lawyers.

As a person who with just cause has every right to be cynical when it comes to matters pertaining to our legal industry. I would suggest that the investigative process of complaints relating to inheritance matters regarding lawyers is influenced by the immense revenue streams that emanate from inheritance for the legal profession.

Approximately 50,000 people die each year in Victoria with an average estate worth \$500,000, approximately \$25 billion per annum.

- The legal profession obtains about 20% of its revenue stream from this source, between one and two billion dollars per year within the state of Victoria.
- With the minimum cost of probating an estate being about \$10,000 and costs ranging upwards of \$100,000 for contested estates that do not go to trial. A full trial starting at \$200,000 to any bodies guess.

I'd have at a guess that the revenue stream to the legal profession from succession law in the state of Victoria would be in the region of \$1.5 billion per annum.

If this segment of the industry were to be reformed so as to service the needs of Victorian families by incorporating:

1. Legislation which prevented lawyers who are appointed as executors from empowering themselves over families.
2. Legislation ensuring that lawyers who are appointed as executors are trained in this area of law and are required to adhere to a set of standards whilst dealing with inheritance matters.
3. Legislation that adopted a European truth seeking system for the resolution of inheritance disputes utilising commissioners rather than our current adversarial system that utilises Supreme Court judges.

I would assume the revenue stream to the legal profession if these and other reforms were implemented this cost of \$1.5 billion to the citizens of Victoria could be reduced by \$1 billion dollars per annum.

Ref Annett Marfording Civil litigation in New South Wales Empirical and Analytical Comparison with Germany

This change would result in:

1. The savings thus being transferred from lawyers back to the rightful owners, the friends and family of the deceased.
2. Families being able to resolve their inheritance issues at a far lower cost in a shorter time and utilising facts to determine the truth, which would reduce the psychological damage to family members and enhance family cohesion which in turn develops community cohesion. I would estimate that for each dollar the legal profession wastes of a families inheritance by furthering disputes which destroys family cohesion, creates a further cost in collateral damage of four times its value to the individual family members, in loss of wages, loss of opportunity and the loss gained from working together as a cohesive family unit in our modern day society.

The \$1 billion of pain to the legal profession would be magnified to a fivefold gain for our families and ultimately our community. The cumulative cost to our state when measured over a ten year period is by no means trivial and would sit between \$50 to \$100 billion dollars, an average of somewhere between \$25,000 and \$50,000 per family unit.

The issues I have raised with the Victorian Ombudsman and the Victorian Legal Services Commissioner are very important for the development of our country and identify the importance in recognising the family as the fundamental structural component for the evolvement of our society.

They also identify the importance of having a positive relationship between families and the legal profession, the expectation of families being that they can and should be able to have ultimate trust in the legal profession. Lawyers on the other hand must participate in the relationship by behaving honestly and in a transparent manner. The regulators of the profession must ensure they do behave, especially when they are anointed to a position of fiduciary trust, as is a lawyer who becomes an executor of a deceased person's estate. When these trusts are eroded by dishonest actions of the legal profession and the regulator does not intervene, one can hardly be surprised that the legal profession is brought into disrepute in the eyes of the community. The relevance of trust to the structure of the relationship between the citizens of the state and the legal profession who are the administrators of the rule of law is fundamental.

The issues also identify the critical nature of ensuring that the regulators of the legal profession maintain this special relationship between the citizens of the state and the legal profession in order that it is not brought into disrepute and the rule of law is not damaged.

These points are basic and essential creeds but unfortunately the Australian Legal Profession have become so entrenched and powerful that their influence is capable of not only stunting the development of our nation through its plunder of grieving families but also it prohibits the regulators who have been set up by democratically elected governments from working in the best interests of Australian families.

It beggars belief that whilst the rest of Australia was being reformed by the legal profession that they themselves avoided it and their services have never been scrutinised. The inheritance industry is such an obvious and simple one to reform and yet its reformation is being resisted by the legal profession. The only tangible reason for the delay must be the legal profession's own self-interest, at the expense of our nation's development. For a contemporary democratic state to even consider this possibility of favouring one powerful group's interests at the expense of national development is absurd and yet nothing has been or is being done to rectify a real situation that has and will continue to damage our nation and the families who make us a nation.

I again urge you to pursue the matters I have raised and work hard in this area so as to give Victorian Families a fair go by confronting the self-interest of a lawyer dominated status quo that have been able to remain unaccountable to the consumers of their services with regards to inheritance law.

If you require any further information to assist in developing these issues please contact me as I will be only too happy to assist.

Yours Sincerely

Diarmuid Hannigan.

**OUR GOVERNMENT MUST PROTECT THE WISHES OF THE DEAD (Part one)**

Dear Member.

I write to you regarding a situation I have encountered pertaining to the way [REDACTED], a large, well respected and influential law firm managed my late mother's estate. The situation is indicative of the failure by the legal profession to protect the Inheritance rights, family rights and human rights of family members in its administration of these estates and is impacting in a negative and destructive manner upon many Australian citizens. The experience my family, along with many other families have endured is an erosion of a fundamental principal of Australian Society.

The Victorian Charter of Human Rights article 17 states.

**17 Protection of families and children**

- (1) Families are the fundamental group unit of society and are entitled to be protected by society and the State.

The passing of inheritance from generation to generation is one of the actions overseen by government through various acts of parliament. Our society recognises the importance of this process and relies upon it to maintain family cohesion and development. Our legal profession and other professions such as professional trustees are available to assist families through this transition. These professions by the very nature of what they do, are highly regarded by our community and when acting for individuals in a fiduciary role as an executor are bestowed with the highest level of trust a person can give, because the person giving that trust knows they will be dead when the trust is enacted.

It is essential that our wider community regards our legal profession with respect and has faith in the people who work within it for the trust to work and for our society, guided by the rule of law, to function. If at any time individuals within this profession break this trust they also break the trust their profession has with the community, therefore bringing the profession into disrepute.

One of the main tenants of government is to appoint regulators in key positions to ensure that dishonest behaviour, empowerment and financial exploitation by individuals and organisations over others are prevented. If this does not occur we see the erosion of the principals of the rule of law. One such regulator is the Victorian Legal Services Commissioner whose job it is to regulate the behaviour of Victorian lawyers as defined by The Legal Professional Act 2004.

The Legal Services Commissioner has stated in response to my complaint that:

- He does not have the power to investigate complaints against lawyers who are acting as executors as they are executors and not lawyers.
- Lawyers who are in private practice are not bound by the Victorian Charter of Human Rights.

The Victorian Legal Services Commissioner in his round table discussion on ascendancy laws stated he had received over 1000 complaints about lawyers in this area of law over a three year period.

Just recently State Trustees had a problem with one of its own employees who misappropriated funds of \$175,000 from 33 estates over a three year period. State Trustees is a government owned company and is the largest organisation in Victoria that administers deceased estates, who should have had systems in place to prevent such systemic abuse of the dead.

In my own family's situation we encountered a lawyer [REDACTED] and [REDACTED] who were assisted by [REDACTED] resident wills and probate specialist [REDACTED]. Problems occurred from the outset in relation to communication. The lawyer [REDACTED] and [REDACTED] disagreed with the family and the family member executor on the interpretation of the will. [REDACTED] stated [REDACTED] had in [REDACTED] possession a letter written to



█ by our mother six years prior to her death that supported █ and █ interpretation of my mother's will. When requested by the family and the family member executor for evidence █ stated the letter was privileged and withheld it from the family. After six years the letter has finally been revealed to the family by █. The contents of the letter prove that █ and █ lied about its contents to the children of my mother and used that lie to persuade the family member executor not to join in the probate of the will. They in fact betrayed the trust bestowed upon them by my mother and broke her will. The result was catastrophic for the internal family relationships and severely eroded the value of the estate available for the beneficiaries to the amount of at least \$220,000 in excess fees and financial waste.

Despite appealing to the Ethics Committee, the Law Institute of Victoria, the Legal Services Ombudsman, the Legal Services Commissioner, the State and Federal Attorney Generals and the Victorian Ombudsman about the concerns the whole family had regarding █ and █ actions, no investigations were carried out.

It was obvious to even the simplest minded person that there was a serious problem. When all four children of a deceased parent including the family nominated executor disagree with an interpretation placed upon their own mother's will by a stranger who will not divulge █ source, as was the case with █ and █ the red flags should have gone up and the alarm bells should have rung loud enough for the regulator to act. If the regulator had investigated the concerns put to them by the children of the deceased at the outset the dishonest behaviour of █, █ and █ would have been discovered and my mother's family would have avoided the ensuing train wreck.

When it is found that a well-respected and prestigious law firm such as █ have failed to implement management systems that prevent █ and █ the firm from behaving dishonestly when they appoint them as their representative executor of a deceased estate, then the firm has been negligent in their duty of care to; their clients and to the legal profession as a whole.

When a █ acting as a fiduciary is found to be lying to the children of their deceased mother in regards to her will, it not only brings the individual into disrepute, but the firm █ and the legal profession as a whole.

The regulators of the legal profession including the Attorney Generals are also brought into disrepute when they do not act, as the wider community expects our government to protect its fundamental values and principles.

One very basic principal is: Do not lie to the children of their deceased mother about her wishes.

The lie by █ and █ exposes a serious flaw within our laws as interpreted by the Legal Services Commissioner and the Law Institute of Victoria, in that lawyers who act as executors are not bound by the Legal Professional Act of 2004 because they are executors. This interpretation may contravene the Trade Practices Act and the Legal Services Commission through his interpretation of the law may well be assisting lawyers who act as executors in carrying out misleading and deceptive conduct.

The behaviour is misleading and deceptive because lawyers who offer their services as executors are perceived as lawyers by the consumer of their services. Many of these consumers believe that because they are lawyers they would have to comply with the laws governing their profession and apply the principles of their profession in the actions they carry out as executors.

In my book Lawyers or Grave Robbers I have written a chapter called Quality Control for Lawyers, A Legal System out of Touch out of Time. (See attached) In this chapter (I wrote the book prior to the letter being

revealed). I take a scientific approach to the prevention of the problem of abuse of deceased estates by lawyers and utilise technological concepts based upon what engineers call quality standards. These standards create the checks and balances in operating procedure so as to minimise errors. Unfortunately due to the self-regulating nature of the legal profession this valuable technology is ignored and there are no standards in place for lawyers who act as executors, which allow them to remain unaccountable for their actions.

I made three suggestions relating to the quality control of services provided by lawyers who are acting as executors.

1. Lawyers who are acting as executors not be allowed to empower themselves over a whole family and must disclose any information they have even if they claim privilege over it when it is relevant to determining the wishes of a deceased families parent.
2. The need for mandatory training and for standards to be written and enforced for lawyers who act as executors.
3. The need for a more informal method of resolving issues pertaining to deceased estates utilising tribunals and commissioners based upon the European truth seeking system of justice rather than our current adversarial system.

All of these suggestions, if implemented would prevent lawyers like [REDACTED] and [REDACTED] from being dishonest by lying to the children of their deceased mother which destroyed her family and has cost her estate at least \$220,000 in primary loses. The cumulative cost is in the millions when loss of opportunity, physiological damage, and time wasted in legal communications and break down in interfamily cooperation are included. This cumulative cost will impact in a negative way upon my mother's family for eternity. Overall [REDACTED] and [REDACTED] have disadvantaged the lives of fourteen people who are the immediate members of my mother's family through their dishonest communications.

I am aware of many other families who have been adversely affected by the costly and inefficient and unaccountable process of succession law. This problem has been verified by the Victorian Legal Services Commissioner in his round table discussion on Succession Law 2010. Unfortunately his recommendations will not solve the problems, as they do not address the internal practices of the legal profession when operating in succession law. There is no mention of Quality Standards or lawyers who act as executors being bound by the Legal Professional Act of 2004 or that they are bound by the Victorian Charter of Human Rights (Refer Submission to The Review of the Victorian Charter of Human Rights. Why lawyers who are in private practice should be bound by the Victorian Charter of Human Rights when dealing with inheritance issues).

Links [http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter\\_review/submissions/09\\_-\\_Hannigan\\_Diarmuid\\_1\\_23.5.2011.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/submissions/09_-_Hannigan_Diarmuid_1_23.5.2011.pdf)

[http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter\\_review/submissions/09\\_Attach\\_A\\_23.5.2011\\_.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/submissions/09_Attach_A_23.5.2011_.pdf)

Fortunately we live in a democratic society where we elect people from our communities to represent our needs in parliament. The parliament has the power to address these issues and is in fact obligated to do so as it is in the community's interest to ensure that prestigious law firms such as [REDACTED] and [REDACTED] never again can act in such a dishonest manner and destroy another Australian family.

I urge you to consider the importance of ensuring the families of deceased parents can trust our legal profession in managing the estate and act to implement the necessary changes to the law so as it assured.

If you would like any further information on this issue please do not hesitate to contact me as I am happy to oblige your requests.

Yours Sincerely

Diarmuid Hannigan

EVIDENCE 7:

Letter received from The Victorian Ombudsman after submitting evidence that [REDACTED] and [REDACTED] lied to the children of my dead mother. Dated 19 10 11



19 October 2011

File No: R/11/39

Mr Diarmuid Hannigan [REDACTED]  
[REDACTED]

Dear Mr Hannigan

In refer to your letters of 10 April and 18 September 2011 which were received at this office on 28 September 2011 and advise that your complaint has been referred to me to review.

My primary task in relation to your complaint is to review this Office's handling of your complaint. Having reviewed the material I am unable to detect any errors in the manner in which your complaint has been handled by the Victorian Ombudsman other than a typographical error in the letter of 23 June 2011, from [REDACTED], Investigations Officer, in which [REDACTED] referred to a letter from The Commissioner as being dated 14 January 2011, instead of 14 January 2010. That letter, [REDACTED] wrote to you advising that this office does not intend to take any further action in relation to your complaint, noting that you have not provided any material indicating any procedural irregularity or administrative error in the way The Commissioner handled your complaint, or any material indicating that particular Charter rights had been breached. I note that in your subsequent letters you do not take those issues further, although you make a number of general allegations of illegality by the solicitor, [REDACTED].

While you have not identified any specific administrative error that the Commissioner made, it seems that your position is that the actions of the lawyers involved were, on their face, clearly wrong and/or illegal and, accordingly, the Commissioner was wrong to have failed to investigate those actions.

To examine that position, I have also examined the manner in which The Commissioner handled your complaint. In that regard I note that your complaint was examined by the current Legal Services Commissioner (see letter of 14 January 2010) and his predecessor (letter of 4 September 2009). And I understand a complaint containing some of the elements of the current complaint was also considered by the former Legal Ombudsman. On each occasion your complaints were dismissed. The former Legal

Services Commissioner's letter of September 2009 provided a very detailed response to your complaint, particularizing her response in relation to the various parts of your complaint. She dismissed your complaint under section 4.2.10(b) - which was explained by her successor as meaning that your complaint was "misconceived". He also advised you that your complaint could also have been dismissed on number of other grounds, namely, sections 4.2.10(c) (subject of a previous complaint), (e) (the Commissioner has no power to deal with the complaint) and (f) (requiring no further investigation). In that letter, the Commissioner also referred to your complaint about breach of the Charter of Human Rights by the solicitors and advised that the Charter has no application to the private sector, advice which I consider to be correct.

By "misconceived" the Commissioner appears to have considered that the complaint was made under the misapprehension that the Commissioner could discipline the solicitors in relation to the matters complained of, which was not correct as, in the Commissioner's view, many of the parts of your complaint were not considered within jurisdiction. As to those which were considered within jurisdiction, no error had been made by the solicitors. I should add that I do not consider the Commissioner as saying that your complaint against [REDACTED] has no jurisdiction in a broader sense; but not in the sense that it was one that the Commissioner was empowered to handle. It appears that this is also the reason why the Commissioner made the point that many of your complaints were matters that only the Supreme Court could deal with and recommended that you seek your own legal advice. Having reviewed the material, I consider that the Commissioner's decision was one that was open to her and was reasonable and appropriate. Accordingly, I find no error in the handling of your complaint by the Victorian Ombudsman.

I would, however, repeat the advice provided by Commissioner Marles in her letter of 4 September 2009; for you to seek independent legal advice as to what avenues of address are available to you in the Supreme Court.

I do not believe, therefore, that this office can be of any further assistance to you and this matter will be concluded and further correspondence on these issues will be noted but not responded to.

Yours sincerely

[REDACTED]  
[REDACTED]

EVIDENCE 8:

Submission to the Victorian Governments review on The Victorian Charter of Human Rights concerning lawyers in private practice not been bound by this charter. Dated 05 05 2011

Link: [http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter\\_review/submissions/09\\_-\\_Hannigan\\_Diarmuid\\_1\\_23.5.2011.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/submissions/09_-_Hannigan_Diarmuid_1_23.5.2011.pdf)



**“Lawyers in private practice are not bound by  
The Victorian Charter of Human Rights”**

To Mr Edward Odonohue

Scrutiny of Acts and Regulation (Chair)

Inquiry into The Victorian Charter of Human Rights

Dear Mr Odonohue

I am forwarding you correspondence I have received from the Federal Attorney General and the previous Victorian Attorney General regarding the fact that lawyers who are in private practice are not bound by the Victorian Charter of Human Rights.

I would ask your committee of review to consider this matter when reviewing The Victorian Charter of Human Rights and its impact on human rights jurisprudence within the state of Victoria.

I draw your attention to the following articles contained within the Universal Declaration of Human Rights.

Article 16 (3) The family is the natural and fundamental group/unit of our society and is entitled to protection by the society and the state.

Article 17 (2) No one shall be arbitrarily deprived of their property.

Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

The State Attorney General and the Federal Attorney General are avoiding the main points of my two letters which deals with:

- The power relationship between family and a lawyer.
- The human rights ramifications of the current power imbalance on every day Australians who have to consume the services of the legal profession.
- The legal industries human rights obligations to the clients and the community it should serve.

They fail to address and answer my concerns, concerns that identify a serious fault within our legal system, a fault that goes to the core and foundation of our civilised society. A fault that if not addressed and addressed immediately, will internally and externally rot our nation.

The principals by which we create our laws result in real outcomes, if we do not acknowledge the importance of the power dichotomy between lawyer and a family as inherent to right and wrong. (The family being disempowered being wrong and the lawyer being empowered within their relationship being wrong. Then one would presume the family being empowered and the lawyer being disempowered would be right.)

If this principal does not exist how can we hope to heal the internal wrongs within our society? We have said sorry to our indigenous population for the stolen generation tragedy and yet the very lack of principal that allowed us to create such pain by the rule of law is not addressed.

We are viewed externally as a party to the invasion of Iraq and Afghanistan under the auspices of “the rule of law” but if we allow plunder of our own families by a privileged lawyer elite under “the rule of law” how can we not be surprised at the cynicism of the invaded and their claims of plunder. Hypocrisy is a very dangerous road to hoe; eventually it is always defeated by the truth.

The future of human rights jurisprudence for Australians must not be controlled by the privileged legal elite who remain outside of any Human Rights Charters, as they

have always shown they act for their own financial gain rather than for the nation as a whole when forming, practicing and administering our legal system.

In Victoria the Attorney General has made a determination that lawyers in private practice are not bound by The Victoria Charter of Human Rights. I assume that the clients of lawyers who are in private practice are human. I assume that lawyers who are in private practice devote a large proportion of their activities to matters involving families although lawyers do not have to take family law as a subject to gain a law degree. I assume, that considering the important function lawyers who are in private practice perform, it would be an imperative of a responsible government, to ensure they recognise the importance of their role in making sure families remain healthy, financially viable and together, because this permits our society to develop in a healthy manner. Since families are composed of human beings both adults and children I would assume they would be protected from human rights abuses by lawyers under The Victorian Charter of Human Rights.

If it is as our former attorney general Robert Hulls infers, one realises that during the years a lawyer works in private practice he is not indoctrinated into the development of human rights jurisprudence as he is not bound by this ethos. Since many become members of the judiciary, parliament or hold influential positions in government, for the benefit of the development of human rights jurisprudence, an ethos of human rights within the profession is fundamental.

Bringing lawyers into the Victorian Charter of Human Rights will ensure our laws are created, practiced and administered by people who are considerate of the human rights consequences of their actions and other members of their legal fraternity.

I would hope that the outcomes would:

- Prevent a lawyer from empowering themselves over a family when dealing with a deceased estate or any other family matter, by utilisation techniques of legal thuggery to advantage his and his firms finances.
- Guarantee that any lawyer performing functions that involve family's` (where all parties are of the one family) in a paid capacity, would respect the inheritance rights of individuals, and the long term health of relationships between family members as basic human rights.
- Ensure that any lawyer acting in these family matters was trained in mediation and alternative dispute resolution and utilised these mechanisms to resolve any issues within the family and not use combatative tactics to feather their own nests.
- Ensure that any lawyer acts in accordance with any quality systems and mandatory training programs legislated so as to ensure the Victorian Charter of Human rights is adhered to and that human rights and financial abuse by a lawyer can be easily identifiable.
- Ensure that there is a cheaper more efficient way of dealing with deceased dispute disagreements in order to protect the inheritance rights thus human rights of every day Australians from the abuse of self-serving unaccountable lawyers. I am sure that the majority of issues pertaining to deceased estates could be resolved by well-trained commissioners without expense and the trappings of our supreme courts.
- Ensure that the government acknowledges that paid lawyers are performing an essential public duty under statutory regulation when probating a

deceased estate. Even though they are paid out of the estate they are performing a role that would otherwise have to be performed by the government in order for our society to function.

Thus, if as we all do, we recognise that common sense will always prevail in the end. Then lawyers who are in private practice when dealing with internal family matters must be bound by the Victorian Charter of Human Rights.

The Victorian Charter of Human Rights is failing us at an even higher level. From the public's perspective The Office of the Victoria Ombudsman and the Office of The Legal Services Commissioner perform an important role in determining the direction of human rights jurisprudence for Victorian citizens.

After receiving 92 complaints from the public on the operation of the Victorian Legal Services Commissioner in 2009 the Victorian Ombudsman carried out a report on this office. The Victorian Ombudsman can neither confirm nor deny it exists, despite the fact that the Victorian Ombudsman mentions the report in his 2009 annual report and the Victorian Legal Services Commissioner refers to the same report which contains 28 recommendations in his 2010 annual report. The report has not been tabled in parliament which prevents it from becoming public knowledge. I can only assume this has occurred because of pressure from the legal industry as its release would lead to greater accountability of the profession. This type of pressure is undemocratic and impedes human rights jurisprudence.

Considering the importance of the role the Legal Services Commissioner plays in determining how our legal profession formulates, practices and administers our laws having in mind the development of a human rights ethos within the profession to its customer base I am perplexed as to the reasons the Attorney General had for failing to table this report in parliament and allowing the citizens of Victoria to contribute to the jurisprudence of our human rights.

The failure by the previous Victorian Attorney General (Robert Hulls) to table the report of The Victorian Ombudsman on the Office of The Legal Services Commissioner to parliament has effectively hidden its contents from the public and prevented the report from becoming public property; by doing so it can be perceived as a mechanism for aiding and abetting lawyers who are currently abusing human rights in Victoria. It appears as if the Law Institute of Victoria has pressured the Victorian Attorney General into withholding the report.

Does one therefore assume that the Attorney Generals Department, the agency that proposed the Victorian Charter of Human Rights is so dominated by the influence of the legal industry that it is prepared to sacrifice its human rights principals and make a mockery of its own creation and is this democratic?

I ask you to ponder this question.

What would happen if there were no probate laws in our society?

Answer: Anarchy!

The state has formed its rule of law through the cohesion of families via organised law pertaining to inheritance. The probate laws enacted by the state ensure the



estate bears the cost of probate. Instead of taxing or using the common purse the legislature has by the rule of law made the estate pay because it is the most efficient way and it does not charge for small estates. Probate is thus a public function funded through private means under government statute because it is the most sensible way to go about it. Common sense emanates from family cohesion over the long term as a means for survival of the family gene.

The access to Justice Report does not contain any mention of.

- Practicing lawyer's human rights obligations to their customer base and to the wider community.
- Accountability for lawyers to consumers regarding the quality of their workmanship or in justifying the paths they have taken during their relationship with a particular dispute and their fees.

Its frame work does not identify the fundamental power relationships that exist within our construct of a human civilised society that are governed by the rule of law. It does not state that the family unit is the construct from which the law arose and by which our society continues to exist. Thus it does not restrict self-interested unaccountable lawyers from exploiting vulnerable families, abusing their human rights and stripping them of their assets to feed their never ending lust for material wealth.

The failure to define the very principals by which we live in order to protect a legal elite prevents us from identifying the basis and purpose for the term "the rule of law".

The task force of the access to Justice reform body is dominated by the legal industry not the bodies that consume its services. In developing a policy to enhance access to justice and the jurisprudence of human rights within Australia you may as well appoint Genghis Kahn to further the cause as a replacement for a Lawyer dominated strategic task force. The problem is not the person it is how they have been programmed through their educational and social experience that is the issue. Lawyers are taught partisan tactics due to the adversarial system that they have to operate in. This skill is not one that would assist in improving access to justice for the majority of Australians.

"Access to justice is central to "the rule of law" and integral to the enjoyment of basic human rights. It is an essential precondition to social inclusion and a critical element of a well-functioning democracy"

(Robert McClelland ATTORNEY- GENERAL)

This said the question is how to achieve the outcome.

We must define the objective.

To define the objective we must ask what are the founding principles upon which our legal system is formed, does it currently serve its purpose and if not, how do we restructure it or rebuild it so as it can serve the purpose demanded from it by a contemporary democratic society?

We want a legal system that;

- is affordable,
- respects the values and frame works that make us a human civilised society i.e. respects our human rights, observes that legal professionals are also human and therefore are equal to their clients and are not permitted to empower themselves over clients.
- Provides consumers of its services with predictable outcomes where the professionals are accountable for the work they do and the decisions they make to the wider society and to the consumers of their services.
- Ensures that quality standards are incorporated into the day to day running of the industry.
- Ensures that the wider community has a majority representation on any law reform task forces in order that the communities' interests are protected from exploitation by the legal elite.

I trust you appreciate the importance to our development in having a synergy between our human rights and how laws are practiced by lawyers and you will ensure that those who form our legal industry are bound by the Victorian Charter of Human Rights, even lawyers who are in private practice when performing duties relating to deceased estates.

Yours Sincerely

Diarmuid Hannigan.

EVIDENCE 9:

Working Families, Denied Natural Justice is an open letter that responds to the legal services commissioner's statement that lawyers in private practice are not bound by the Victorian Charter of Human Rights and is available on the following link . Dated 16 05 2010  
2[http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter\\_review/submissions/09\\_Attach\\_A\\_23.5.2011\\_.pdf](http://www.parliament.vic.gov.au/images/stories/committees/sarc/charter_review/submissions/09_Attach_A_23.5.2011_.pdf)

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
Sunday 16th May 2010

Working Families, Denied Natural Justice

Dear Good Person.

I am writing to you to express my concerns in regards to three letters I have received.

One is from The Victorian Legal Services Commissioner (Letter 1) in which Mr McGarvie states:

"The Victorian Charter of Human Rights only applies to Public Authorities. A legal practitioner in private practice does not have to comply."

This letter is in response to a complaint that I raised with the commissioner regarding the decision by [REDACTED] to withhold a letter from my late mother written six years prior to her death, which is being used by the lawyer to justify [REDACTED] decisions regarding my family's inheritance. My mother's children and grandchildren do not agree with the lawyer's interpretation of her will and have on many occasions requested a copy of this letter. The non-disclosure of this letter allows the law firm [REDACTED] and the lawyer [REDACTED] to remain unaccountable to my family and my mother's family. The exercise has split my mother's family and has cost the estate at least \$100,000, the majority of which has been appropriated by [REDACTED] in fees and charges. Through their actions they have been able to exploit our families and have eroded the value of our inheritance, whilst simultaneously destroying a well-balanced family.

The second is from the Victorian Ombudsman (Letter2) in response to a request for a copy of his report on the office of the Victorian Legal Services Commissioner which he mentions in his 2009 annual report.

"I confirm that as the Ombudsman conducts his investigations in private, pursuant to section 17(2) of the Ombudsman Act 1973, this office is unable to confirm or deny the existence of Ombudsman's reports that are not publicly available."

I have requested this report as it contains 28 recommendations on ways to improve the operations of The Legal Services Commissioner in satisfying consumer needs. The reason I have requested this report is so I can analyse the process used to investigate my complaint and ensure that the complaint was handled in a proper manner. Thus ensuring that the work done by The Legal Services Commissioner on my complaint was carried out in a professional manner. The act of denying me access to this report effectively sends a message that The Office of The Victorian Legal Services Commissioner and the office of the Victorian Attorney General choose to be unaccountable to a consumer such as myself.

The third is from The Victorian Legal Services Commissioner (Letter 3) in response to a freedom of information request in which the Office of The Legal Services Commissioner chooses to withhold 16 of eighteen documents that I have requested. The concealment of these documents illustrates how unaccountable the office of the Victorian Legal Services Commissioner is to the Victorian public.

The actions by the law firm, coupled with their unaccountability, have damaged the destiny of my family and have abused our family rights and our human rights.

This would not be such an issue if it were only a one off case, but systemic abuse by lawyers, combined with an antiquated, unaccountable and costly legal processes is damaging many families on a daily basis within Australia. This damage is particularly severe in Family Law proceedings and with regards to deceased estates.

When one becomes aware of the damage that is being wreaked upon families who are entering our judicial process and the financial and social waste to our society, one would expect a responsible government operating in a contemporary liberal democratic state to create a legal process that by its very structure, aimed to assist and help people, who need to resolve their problems via the consumption of its services. One would expect a government would ensure this process and the professionals who work within it, are accountable to their customer base, who are predominately Australian families.

The financial waste caused by our current legal process of family law and deceased estates could well amount to \$50 billion per year. The greater part of this wealth is extracted from the capital base of families. The resulting loss of wealth to these families can have no positive outcomes for their future but the wealth does end up with the legal fraternity. This denies working families' natural justice.

Approximately 150,000 Australians die each year leaving an average estate worth \$500,000. Approximately 75 billion per year. Legal costs amount to about 7 billion and a further 12.5 billion is diverted into trusts by the legal profession.

Annually 50,000 families are processed by The Federal Family Courts at an estimated cost of \$30 Billion. (Legal fees of approximately \$15 billion and \$15 billion is lost through asset redistribution). There is a significant increase in the suicide rate amongst this group when compared with the general population: They are men women and children. A proportion of this rate increase must be attributed to the methodical process of asset stripping of families by the legal profession in its unaccountable pursuit of resolution.

The role of government in our contemporary state is to work towards a fair and just society. It stands above hegemony and works in the interests of our community as a whole. Through its evolution it has abolished slavery, evolved a society of universal suffrage and acknowledged the existence of human rights.

Australia was settled as a penal colony; the power imbalance between the convict and other members of the society was absolute. The jailer held the power and the prisoner had no option but to yield to it. The convict was a slave without a commercial value entombed in a prison created by the state. Through our isolation and our need to survive, we realised the importance of understanding our natural environment and the role of common sense. This realisation shaped the relationship between the convict and the jailer and incorporated common sense into our way of life and governance. This incorporation of common sense into the fabric of our society has made our nation the country it is today.

*It would make common sense in my family's case for the lawyer ██████ to fax us a copy of our mother's letter to ██████ so as ██████ could be accountable to us for ██████ actions.*

The initial competing interests in Australian colonial society were between the convicts and those who ran the colony. This society had little room for the evolution of family rights and the roots of many modern day peoples' distain for our legal system, lie here.

Fortunately as time passed and our nation invited migrants to these shores our values developed and the role of family as in any stable society became dominant. Being a Christian society our church bought these families together under the sphere of god and common sense. Our values of family, and our religion intertwined and were embedded in our constitution upon Federation. The connectedness with family has always been the mainstay of this wonderful nation that we live in and is what gives us our strength and our ability to be a tolerant and fair society.

The disregard for mindless authority devoid of common sense is embedded into Australian culture and showed itself during the two world wars in which Australians fought. This ability of the Australian Corps to utilise common sense in the face of mindless orders and rules gave them an edge which produced a superior fighting unit capable of responding appropriately to the real challenges of their travails.

One of Government's main functions is to work towards reducing the exploitation of a powerful and privileged group in this instance; (The legal profession), over a weaker poorly resourced group; (The people who make up our communities).

Our government has been given this power through democratic elections and represents all competing groups without having a bias or a vested interest. Its purpose is to evaluate and act upon situations that work in the best interests of the community. Unfortunately it appears as if our current government which is well endowed with members of the legal profession, appears to have a bias towards the profession.

This is all too apparent when one realises how law reform is carried out within Australia. A committee comprising mainly of lawyer interest groups is formed to investigate matters pertaining to law reform. The vested interests of the legal profession lobby to ensure its interests are protected. This has created an industry that does not use standards, is not accountable to consumers of its products and continues to maintain its reliance on self-regulation.

When you ask

- Why has the Victorian Attorney General Mr Hulls suppressed the Report on The Victorian Legal Services Commissioner by The Victorian Ombudsman?
- Why won't the Legal Services Commissioner demand that ██████ produce the said letter?
- Why is it that lawyers in private practice who are court appointed and practice the laws proclaimed through acts of parliament in Victoria are not bound by The Victorian Charter of Human Rights?
- Why is The Victorian Legal Services Commissioner denying full access to his investigatory files in relation to consumer complaints?

Yes in deed, you may well ask. It does make one wonder why the legal profession seems to be above accountability: At present the Zeitgeist demands an end to hegemony as demonstrated by the current global legislative momentum to bring accountability to our financial profession, so as to prevent another Global Financial Crisis. The most influential office on the planet headed by President Barack Obama is demanding accountability from wayward Wall Street Bankers.

However now it's accepted that no group should be without proper governance and answerability for due diligence in the discharge of the duties they are paid to perform least society at large bear the brunt of the irresponsibility.

“All that is necessary for the triumph of evil is that good men do nothing.”

**Edmund Burke**

*Irish orator, philosopher, & politician (1729 - 1797)*

In your position as a person of influence I urge you to ascertain through the Parliament

- (1) Is Mr McGarvie`s statement re lawyers in private practice and The Victorian Charter of Human Rights true or is just an interpretation made by and on behalf of our legal elite?
- (2) Why is our Attorney General Mr Robert Hulls concealing the Victorian Ombudsman`s Report from the people of Victoria particularly when the Victorian Legal Services Commissioner is fundamental in identifying and addressing systemic abuse by the legal profession?

I believe that our legal profession is obligated to observe our human rights above their own self-interest of gathering fees at the expense of family equity. The role of common sense and our Christian values are entwined within our constitution so as to place that caveat on those who practice law within Australia. This is an unwritten and assumed component of our constitution, which should prevent lawyers from empowering themselves over families.

It is the responsibility of our elected parliament, who appoint this profession and whose Acts they abide by, to work with them to provide a system where:

- we all have affordable and timely access to justice.
- The relationship between the legal profession and the consumer has accountability.

The claim by Mr McGarvie that lawyers in private practice do not have to abide by The Victorian Charter of Human Rights is preposterous, especially when one considers, they are dealing in many instances, with peoples and families destinies. The way these matters are handled impacts upon the well being of our communities and our nation for time immemorial

The refusal by The Victorian Ombudsman to release his report on The Victorian Legal Services Commissioner to the public is a retrograde step which will retard our social development. It will prevent public comment on the performance of our legal profession from the consumer perspective which will raise the issue of the legal professions need to be accountable to all Australians. The attempts to keep this report secret smacks of legal nepotism.

Mr Hulls replaced The Victorian Legal Ombudsman Kate Hammond with the office of The Legal Services Commissioner because her office and the legal profession had irreconcilable differences of opinion. He promised us this move would improve our legal system. The office receives about 2500 complaints a year and only ever acts on about 150 of them. The other 2350 are dismissed. One wonders how many other complaints there were from people who could either not be bothered, were so gutted by the legal process that they had not the energy or fortitude to peruse it and people who through their lack of education or circumstances where not even aware that they had grounds for a complaint. I gather 80% of customers of the legal profession are dissatisfied.

Australian 31/10/2008 Reported:

The Victorian Department of Public Prosecutions Jeremy Ranke QC says: “Something very serious is amiss with the manner in which criminal trails are conducted” and Rob Hulls the Victorian first law officer had said that: “lawyers need to abandon many of their adversarial traditions and join him in a cultural revolution based on an active, problem solving judiciary”.

When you combine this information with the statement by The Victorian

Legal Services Commissioner and the refusal by The Victorian Ombudsman to release his report, I trust you appreciate these serious inconsistencies and will act as a good person to restore the balance of power between the legal profession and working families so as to give all Australians access to natural justice.

I eagerly anticipate your response and am most willing to assist.

Yours Sincerely

Diarmuid Hannigan

(Author) Lawyers or Grave Robbers

Ref [www.lawyersorgraverobbers.com](http://www.lawyersorgraverobbers.com)

### **Appendices**

- 1) Letter from Legal Services Commissioner to Mr Diarmuid Hannigan 14 02 2010  
Referred to as (Letter1)
- 2) Letter to the Victorian Ombudsman from Mr Diarmuid Hannigan 18 02 2010  
requesting a copy of his report on the Victorian Legal Services Commissioner.
- 3) Copy of extract from The Victorian Ombudsman's annual report regarding his report  
on the Legal Services Ombudsman..
- 4) Letter from The Victorian Government Ombudsman 23 02 2010 responding to my  
letter requesting his report on the Victorian Legal Services Commissioner, Referred to  
as (Letter 2).
- 5) Letter from the Victorian Legal Services Commissioner responding to my Freedom of  
Information Request.

EVIDENCE 10:

Letter from the Victorian Legal Services Commissioner stating that lawyers who are in private practice are not bound by the Victorian Charter of Human Rights. Dated 14 January 2011

**Appendix 1**

Legal Services **COMMISSIONER**

Your ref:

Our ref: LSC/09/2054  
[REDACTED]

9/330 Collins St Melbourne VIC 3000  
GPO Box 492 Melbourne Vic 3001 DX 185 Melbourne  
t 1300 796 344 (local call) t 03 9679 8001 f 03 9679 8101  
[www.lsc.vic.gov.au](http://www.lsc.vic.gov.au) ABN 66 489 344 310

14 January 2011

**Private and Confidential**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Michael McGarvie  
Legal Services Commissioner

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EVIDENCE 11:

Letter from The Victorian Ombudsman in response to a request for his copy of a report he carried out on The Victorian Legal Services Commissioner. Dated 23 02 2010

**Appendix 4**



23 February 2010

File No: C/10/101

Mr Diarmuid Hannigan [REDACTED]  
[REDACTED]

Dear Mr Hannigan

Your correspondence to Ombudsman Victoria

I refer to your correspondence 16 February 2010 in which you request a copy of an Ombudsman's report regarding the Legal Services Commissioner of Victoria. I also refer to my telephone *call* to you on 23 February 2010.

I note you contacted this office on 5 January, 2010 and you were advised that the only ombudsman's reports available to the public are those tabled in Parliament. All public Ombudsman reports are available on the Ombudsman's website at [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

I confirm that as the Ombudsman conducts his investigations in private, pursuant to section 17(2) of *the Ombudsman Act 1973*, this office is unable to, confirm or deny the existence of Ombudsman reports that are not publicly available.

I trust this information is of assistance.

Yours sincerely

[REDACTED]

Enquiries Officer

EVIDENCE 12:

Letter to the Victorian Ombudsman requesting a copy of his report on the legal services commissioner. Dated 16 02 2010.

**Appendix 2**



The Victorian Ombudsman  
Mr George Brouwer

Dear Mr Brouwer.

I am writing to request a copy of your report on the Victorian Legal Services Commissioner. I understand this report contains 28 recommendations pertaining to the operation of the Victorian Legal Services Commissioner.

This report will assist me in responding to The Victorian Legal Services Commissioner and a submission to The Council of Australian Governments involvement in the reform of regulation affecting the legal profession in relation to the management of deceased estates by legal professionals.

My own dilemma although appearing trivial, goes to the core of how we as a society treat each others within a legal framework and the obligations we have to in order to avoid the abuse of human rights, family rights and inheritance rights.

The reason I have been led into this legal maize has been caused by a lawyer who along with my sister were appointed executors of my late mother's estate. Prior to probate being granted a disagreement had occurred between the beneficiaries of the estate (My mother's children) and the lawyer. My sister, the co executor requested a copy of a letter written to [REDACTED] by my mother six years prior to her death that the lawyer said [REDACTED] had in [REDACTED] possession. [REDACTED] refused to show her the letter and has refused all other requests to show the letter claiming legal client privilege. [REDACTED] claim has no rational basis whatsoever apart from the power [REDACTED] holds in [REDACTED] position as executor and is clearly positioned to advantage [REDACTED] financial interests.

As a result of the lawyers treatment of my sister and her fragile state she did not take up her position as Executor which has left the family in a powerless position. The fact that the family has not been allowed to interpret their mother's wishes (letter) has led to a prolonged and painful experience.

I have approached The Victorian Legal Services Commissioner regarding my concerns and as yet I have been unable to obtain a copy of this letter. I have no desire to begin litigation as it will further the abuse that has already been wrought upon my mother's estate by the lawyer and [REDACTED] firm. I believe that it is an inheritance right and therefore a family right to have access to information that determines ones destiny and that of ones family. It is a fundamental human right and is an integral component of a civilised society governed by the rule of law. Inheritance rights and their relationship to law are the reason law was founded.

I have enclosed a copy of a letter I have received from the Victorian Legal Services Commissioner and raise my concerns to you regarding Paragraph five. A legal practitioner in private practice is not required to comply with the charter. (The Victorian Charter of Human Rights).

There appears to be a major dislocation between public perception and reality in regards to this issue. I ask the question. How does the government ever hope to instil a philosophy of human rights respect throughout our community if the people (lawyers) who are working the legal system are exempt? Particularly when these people are highly paid professionals who are dealing with the destinies of families.

I look forward to your response and to the opportunity of reading your report. I am aware the report has not been tabled in parliament but since the role of the Victorian Legal Services Commissioner is a fundamental instrument in shaping our Legal services industry so as it becomes cost efficient affordable and of benefit to our community the public interest becomes a more important factor.

Yours Sincerely

Diarmuid Hannigan.

### **Appendix 3**

#### **Legal Services Commissioner**

The *Legal Profession Act 2004* established the office of the Legal Services Commissioner and lists its objectives, one of which is: to ensure that complaints against Australian legal practitioners and

disputes between law practices or Australian legal practitioners and clients are dealt with in a timely and effective manner.<sup>6</sup> The role of the Legal Services Commissioner is to protect both consumers of legal services and the public interest in the proper administration of justice. The Legal Services Commissioner has the power to address complaints made against Victorian legal practitioners to ensure that they acted within the confines of the law, with appropriate ethical standards and with deference to their professional position.

The Legal Services Commissioner can receive complaints which relate to disputes about legal costs, claims of up to \$25,000, or disciplinary matters. The legal system can be financially costly and the law can be complex, with intricacies which many members of the public find difficult to navigate and understand. This can leave the public vulnerable to unscrupulous, negligent or unprofessional practices of legal practitioners.

Over the past year I received 95 complaints about the Legal Services Commissioner, which replaced the former Legal Ombudsman in December 2005. There were recurring themes in the complaints which pointed to a systemic failure by the Legal Services Commissioner to adequately undertake its statutory role.

For example, complainants alleged that:

- complaints were inadequately investigated or not investigated at all
- there were significant delays – sometimes in excess of three years – in finalising complaints
- documentation practices were poor and failed to provide complainants with information about

the Legal Services Commissioner's internal review process and external review mechanisms

- investigations lacked procedural fairness.

The following case study highlights that the lack of appropriate review powers in place for the Legal Services Commissioner is still the case. It illustrates how this can result in injustice to complainants and allow practitioners to avoid detection and/or prosecution as a consequence of the current legislative

6 Section 6.3.2.

Mr Clark said Dr Ian Hardingham QC had been appointed to the Commission to undertake the review of Victoria's succession laws announced earlier this year, which will examine a wide range of issues relating to wills, estate administration and inheritance.

"Dr Hardingham has great expertise in the law relating to wills and estates, as well as equity law more generally, making him an ideal person to lead this review," he said.

[www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

## 22 ombudsman victoria annual report 09

*I recommended that the Attorney- General consider amending the Legal Profession Act 2004 to enable the Legal Services Commissioner to review its merits based Decisions where there have been deficiencies in its investigations or errors in its decisions.*

framework. I recommended that the Attorney-General consider amending the *Legal Profession Act 2004* to enable the Legal Services Commissioner to review its merits-based decisions where there have been deficiencies in its investigations or errors in its decisions.

I understand that this is being considered as part of a national reform of the Australian legal profession announced by the Council of Australian Governments.