

## Submission to the Victorian Law Reform Commission's paper:

### Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries

#### Regulation of the legal profession in Victoria

In reviewing the draft Victorian Law Reform Commission paper on the *"Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries"*, the emphasis is on: (a) the existence (or absence) of industry regulation in selected commercial enterprises and (b) proposed models for appropriate regulation of selected commercial enterprises. These enterprises include fields like road transport, lawful sex work, labour hire, gaming and waste management which are vulnerable to infiltration by organised crime.

Unlike these businesses, the legal profession in Victoria has always been very highly regulated. Currently the Victorian Legal Services Board + Commissioner regulate the legal profession in Victoria under the *Legal Profession Uniform Law* which commenced as recently as 1 July 2015. It is part of a proposed move to implementing uniform legal regulation in Australia, although to date, only Victoria and New South Wales have chosen to participate. The legal profession has been highly regulated in Victoria by legislation and regulation since 1891.

It is unlawful to engage in legal practice in Victoria without proper authorisation. Authorisation is effected following a period of study and practical training and includes both admission by the Supreme Court and an annual licensing regime which grants practising certificates.

The Victorian Legal Admissions Board ('the Admissions Board') assesses the fitness and suitability of candidates to be admitted to practice law in Victoria, including a candidate's criminal history or previous misconduct. This operates as an important regulatory mechanism to prevent infiltration of the profession by organised crime groups. The onus rests upon the applicant to make full disclosure and satisfy the Admissions Board of suitability.

*Legal Profession Uniform Law* also re-establishes the Victorian Legal Services Board ('the Board') and the Victorian Legal Services Commissioner ('the Commissioner') which existed under the previous legislation. Both the Board and the Commissioner jointly undertake regulatory activities in Victoria for practitioners following admission. The Board is responsible for issuing and renewing practising certificates. In this case, whilst the candidate has an ongoing duty of disclosure, it is for the Board to determine that an individual is not fit and proper, and so if suitable to practice law.

In addition to this, lawyers are required to comply with proscribed ethical standards and rules about how they interact with clients, other lawyers and the courts and are required to undertake continuing professional development through education. Breaches of those requirements can lead to complaints which are made to the Commissioner and can then lead to sanctions including restrictions on practice.

One area of risk relates to the large amounts of trust money held by lawyers. Where a lawyer is permitted to deal with trust money, he or she is required to provide the Board with regular audits and can be subject to inspection at any time. We believe that these measures are designed to prevent or reduce the risk of infiltration by outsiders who may seek to access trust money.

Lawyers of course may be called upon to advise clients who themselves are involved in organised crime. This could involve the lawyer advising on business structures and financial arrangements that might be used by the client in pursuing their criminal interests, unbeknownst to the lawyer. As with all clients any advice given is confidential and the subject of legal professional privilege. This does not mean however that a lawyer can act contrary to the law or the ethical standards that bind them just because their client has advised them to.

### Organised crime and the legal profession

Our experience of lawyers who could be said to be involved in organised crime is limited. There have been a few individuals who have engaged in criminal activity; case studies are below, but these are as individuals rather than members of an organised group.

Our experience is that crimes committed by lawyers tend to be in the context of a rogue lawyer working alone, rather than as part of an organised group. We are not aware of infiltration into legal practices by organised crime groups.

Lawyers will (and must) associate with those accused of criminal behaviour in order to represent them. It is clear from empirical sources that some lawyers will be susceptible to the influence of criminal clients and will cross the line and engage in criminal activity. Within Victoria however, neither the Board nor the Commissioner have any specific evidence of, " ... infiltration ...", of the legal profession by organised crime, and there is nothing to suppose that any such infiltration is likely in the future.

Whilst in limited cases the regulator has become aware of individual barristers developing inappropriate associations with organised crime figures, these are infrequent and appropriate regulatory action has occurred in each case.

This is not to suggest that lawyers have not been found to have engaged in dishonest conduct involving significant amounts of money. Where this has occurred however, it has been:

- i) a very small minority; and
- ii) the product of individual behaviour on the part of the practitioner, as opposed to being a part of a larger criminal enterprise. Recently prosecuted former practitioners have included Mr Munt, Mr Maloney, Mr Vance and Mr Linacre. In these matters, the trust account inspection regime played a critical role in either detecting, and or providing important evidence for the prosecution of these offenders. In each case the prosecutions were brought by Victoria Police who has a much wider range of powers of investigation.

Limited examples exist of current practitioners who the regulator believes may have links with organised criminals. These instances are rare however, and where known, are currently being monitored. By way of example see the following Case Studies:

#### Case Study 1:

[REDACTED]

[REDACTED]

[REDACTED]

*Case Study 2:*

Last year there was some press about an unidentified lawyer known as 'Lawyer X' alleged to have gone into witness protection due to publicity about X acting as a Police Informer, while at the same time representing various 'underworld' figures. The police hold serious concerns for the safety of X. As was reported at the time:

"...good lawyers know how to remain professional and impersonal ... but there a few who get sucked into the underworld and start treating clients as friends..."

A Melbourne lawyer feels trapped, having made the mistake of treating clients as friends. The lawyer believes those friends are exerting pressure to join in criminal conspiracies.

Detectives persuade the lawyer to become a secret source of intelligence.

The lawyer continues to represent clients while talking to police, although as yet there is no suggestion the lawyer sabotaged defences or handed over privileged information.

Regardless, the lawyer is in an ethical minefield as the lines between friends, enemies, clients and police blur.

Sources say the information was general and more about criminal associations than "smoking gun" evidence ...

Some lawyers talk out of school. A client in a privileged meeting may mention that another crook had confessed to an unrelated crime in a previous jailhouse conversation.

More than once such information has been passed over [by a lawyer to the police] as a general tip during after-court beers."

Read more: *The Age*, Thursday April 2, 2014 <http://www.theage.com.au/victoria/lawyer-x-marks-a-sticky-spot-in-criminal-justice-system-20140402-35y18.html#ixzz3hMRN1c24>

*Case Study 3:*

As a part of a much larger operation, Police were concerned that a senior barrister had received very large sums of money from clients involved in organised crime, around the time of an alleged multi-million dollar fraud involving various related corporate entities within a corporate Group. Police contacted the Legal Services Commissioner and Legal Services Board about the concerns, and as a part of various enquiries information was exchanged as is permitted under the *Legal Profession Act 2004* (Vic).

The barrister seemed to have acted for some of the Group's directors and entities, and the funds were allegedly received into the personal account of the barrister as a part of a so-called 'retainer agreement', rather than being paid into the trust account of the approved barrister's clerk as:

"money received by an approved clerk on account of the legal costs of one or more barristers in advance of the provision of the legal services to which those costs relate".

Definition of 'trust money' - section 3.3.2 *Legal Profession Act 2004* (Vic)

The 'retainer agreement', which ran for about a 6 month period, was investigated by the Police who observed that it was a general engagement of the barrister "to act for a number of individuals and entities associated with the corporate Group". The matters were predominately bankruptcy and insolvency related, and so the barrister made it an express term that he be paid in advance for all work to be undertaken.

Provision for such a retainer was provided for in the Victorian Bar Inc. Practice Rules. In the absence of any evidence of wrongdoing the Board and Commissioner informed the Police they had completed their involvement.

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