



NEW SOUTH WALES
BAR ASSOCIATION

20/119

27 March 2020

The Hon. Mark R. Speakman, SC MP
Attorney General, and Minister for the Prevention of Domestic Violence
GPO Box 5341
SYDNEY NSW 2001

By Email

Dear Attorney

Assistance to Barristers

Despite the extraordinary circumstances of the current pandemic, the various Courts and Tribunals of New South Wales have, to differing degrees, been kept in operation to ensure that the administration of justice is maintained where it is possible to do so.

Barristers play a unique role in the administration of justice and our members have risen to the challenge in these unprecedented times. Our members have appeared in hearings, embraced new technologies, and made themselves available to ensure that the interests of the members of our community are served. We are receiving daily reports of our members working co-operatively with the various State Courts and Tribunals in this regard, and the work of all the officers and staff of the Courts and Tribunals is to be commended.

At all times, our members have been advised and encouraged to work on the basis that their health and safety, and that of their families, the Court and Tribunal members and staff, is of paramount concern. There are some discrete issues and teething problems in some Courts and Tribunals with technologies and other protocols, as would be expected given the rapid changes occurring daily. We are seeking to maintain a dialogue with the State Courts and Tribunals to ensure that our members' concerns are addressed. These problems are particularly acute in the inferior State jurisdictions, where historical funding constraints have resulted in limited audio-visual facilities being available, limited amenities and reduced cleaning permitted for premises which all falls short of the extent necessary safely to facilitate physical appearances.

However, while our members are seeking to take all steps available to them to continue practising, many of our members are confronting present or imminent financial difficulties. That is not least because, despite the best efforts of the Courts and Tribunals, and our members, some trials and hearings have not been able to proceed as anticipated, or at all. Juries are an aspect of many State criminal trials, but no new juries are being empanelled until much later this year. Commonwealth criminal trials can only proceed with juries. Sentencing proceedings and bail applications are being prioritised but there are many practical issues with them proceeding. In civil cases, understandably priority is being given to the matters that necessitate it.

This has affected the income of our members including from State agencies, in circumstances in which they are simultaneously confronting expenses on business loans, rents, utilities and the expenses associated with their livelihood and that of their families.

While Barristers play an integral role in the administration of justice, they are also business operators. They are not permitted by professional rules to be incorporated. They are sole traders who have all the attendant challenges and expenses of running a small business as a sole trader.

With all of the above in mind, the Bar Association of New South Wales seeks the following:

1. Prompt payment of fees owing by State agencies to barristers. This issue is made more urgent by a current backlog in the payment of barristers' fees by State agencies, caused by the recent introduction of a new administrative payment system.
2. A grant of funding for assistance to barristers of over 5 years' standing who are unable to pay their practising certificate and membership fees on account of the impact of the coronavirus on their income. We note that the NSW Bar Association has waived fees for barristers under 2 years and has indicated that, for barristers of 2-5 years' standing, we will accept, on a case to case basis, applications for waiver of their practising certificate and membership fees.
3. Extension of business stimulus packages and concessions for sole traders. This could take various forms including:
 - a. making certain classes of barrister (e.g., legal aid practitioners) eligible for grants worth a set percentage of their average monthly profits, over a set period (e.g., the past 12 months);
 - b. introducing a financial assistance package for barristers who practise primarily in certain areas (e.g., legal aid matters), so that, when court services resume at a higher or normal level, those practitioners can feasibly resume their practices.

4. Relief from the payment of rent or fees payable by sole traders for the occupation of premises and protection from eviction, irrespective of whether there is a relationship of lessor or lessee (as many of our members pay license and other fees for the occupation of their place of business, being chambers).
5. Encouragement to State agencies to continue to brief barristers in respect of both civil and criminal trials, with development of appropriate work flows for work that can be performed during the period of the pandemic, such as properly funded preparation. In particular, steps should be taken to ensure that the Legal Aid Commission properly and promptly pays for all preparation work done by barristers and, during this pandemic, does not refuse to do so on the basis a further preparation fee may later be required when the case is actually called on. This would include explicit funding for the preparation and argument of pre-trial matters, appeals and the like.
6. Review of the terms upon which employees of State agencies (such as solicitors within the Crown Solicitor's Office and Legal Aid employees) are permitted to appear to instruct barristers, to facilitate the continued conduct of proceedings consistent with the health and safety of all involved. Currently, we understand there are directions in place or soon to be in place, that such employees may not physically attend court. If there is no AVL or the AVL is not working, this impedes the matter proceeding.
7. Increased assistance to the District and Local Courts in the form of cleaning every two hours during the pandemic and suitable, adequate technological facilities to enable Court proceedings to continue.
8. Encouragement to banks and commercial lenders to waive or defer payments due under loans and other transactions with sole traders for the period of the pandemic, and to consider waiver of interest payments in certain circumstances.

The Association is ready and willing to discuss any of the issues raised above and to answer any queries you may have.

I look forward to hearing from you.

Yours sincerely



Tim Game SC
President