

Statement in Support of the Resolution (*limited to 1000 words, 994 words so far*)

The Legal Services Board intends to recommend the implementation of Part 5 of the Legal Services Act 2007 relating to Alternative Business Structures, permitting the whole or majority commercial ownership of solicitors firms on 6 October 2011.

The Members of the Society are becoming conscious of the impact of such implementation as follows:

The loss of the future independence of the legal profession to the detriment of the state and the public

The future dominance of the legal profession by commercial interests to the detriment of the state and the public

The potential detrimental effect on the majority of solicitors firms by unfair competition by large commercial organisations

It is accepted that this proposal has been through a lengthy process since the original Office of Fair Trading Report and through the Clementi report and Legal Services Bill. The Act was passed before the recent financial services debacle, now widely acknowledged to have been caused by commercial motives including greed which were not capable of being satisfactorily regulated by the Regulators. There is no guarantee that the regulation currently proposed will prevent a future Legal Services crisis.

Such a crisis may not be as dramatic as that within the financial services sector, but it will be as pervasive and long-lasting, in changing the balance of our society to increase the dominance of commercial interests against the check of an independent legal profession.

No other country in the world, apart from the case of one publicly owned company in New South Wales, has entrusted its legal services to be owned and controlled by the commercial market.

No survey has been carried out whereby the public has indicated a demand for commercial ownership. There is no evidence of such demand.

The only real beneficiaries are a few commercial organisations whose ultimate duty it is to maximise their shareholders or owners profits.

No mandate has ever been given by the members of the Law Society to the council to acquiesce in the commercial ownership of parts of the profession.

It is accepted that it is not obligatory for firms to become alternative business structures and commercially owned, but the commercial imperative of so doing will become greater and greater to the extent that small firms, which in the past to provide the majority of legal advice on a local basis, will no longer be able to do so, to the detriment of clients.

That does not mean that the profession is against the development of the provision of legal services through larger bodies, but not to the extent that larger commercial bodies will have the financial muscle and commercial motives to wipe out smaller competition.

This resolution is instigated by the Sole Practitioners Group Executive Committee but is supported, in the 100 names necessary for the requisition for the Special General Meeting leading to the postal vote upon the resolution, by Law Society members across the profession. The Sole Practitioners Group is the only body of the Law Society or lawyers generally which has canvassed its members as to alternative business structures and in 2005 that opposition was 95% of those responding, and in 2010 was 90% of those responding.

The proponents of this Requisition take the view that there is a large body of the membership of the Law Society who are not content with the way in which the Council have represented the membership over the years, in not opposing the commercial ownership of legal services. Any voices of dissent to the Bill leading to the Act at the time of its passing were responded to by the argument as to why the Law Society, as the voice of the profession, was in favour, or at least not in opposition, to such commercial ownership.

A final attempt has been made by the Sole Practitioners Group to lobby members of the new coalition parties against the implementation of Part 5. Many MPs have passed the letter of representation to the Ministry of Justice which, in reply to individual MPs, has avoided the question of principle, and merely reassured MPs as to the protections and safeguards given by the

proposed regulations, and MPs have passed this response on hoping that we are satisfied with those reassurances.

Obviously reassurances as to protections and safeguards do not meet the concerns that the commercial ownership of the provision of legal services is wrong in principle and will lead to a commercially led non-professionally based provision of legal services in the future.

Many other countries, particularly America, have considered this proposal and rejected it. No other country has adopted it. It is incomprehensible as to why the Coalition Government are happy to implement part of an Act of Parliament introducing such a principle, which was enacted during the term of office of a former Government, without further public or Parliamentary scrutiny.

Those behind this requisition do not urge you to vote one way or the other but give you an opportunity to consider what it said on both sides and to make up your own mind as individual independent solicitors as Members of the Law Society and make your views known to the Law Society.

It will be said that nothing much can be done to prevent the introduction of the commercial ownership of the profession at this late stage of the day, but at least the Law Society members will have been given an opportunity to express their views. In the event that Part 5 of the Act is brought into force, there are still many issues to be resolved as to the regulation of the commercial entities who will inevitably take over much of the provision of legal services, and the fact of the clearly expressed views of the membership may well have some influence on these issues.

The proponents of this Resolution urge every member who receives the postal vote to express their opinion on the resolution and to have their voices heard on this matter by way of this referendum.

Addendum to the resolution to the statement to deal with a third question proposed as to the regulation of ABS by SRA. This will be incorporated into 1000 words by editing which cannot be carried out in the space of time available

The Group understand that it is the current proposal to be brought before council that the SRA should regulate ABS. This will mean that the SRA

which is the **Solicitors** Regulation Authority will then be regulating bodies are owned and managed by individuals who cannot be members of the Law Society as qualified solicitors. It is appreciated that the intention is to have a "level playing field". The playing field can never be "level" setting solicitors firms against commercial organisations with their substantially larger financial capability and their commercial ethos of profit for their shareholders.

The ultimate effect will be that the SRA will be dominated by the Alternative Business Structures or will be forced into compliance with their demands to the prejudice of solicitors.

In addition the cost of regulation of Alternative Business Structures will be substantial and is already going to incur the profession in a significant amount of regulatory set up costs through the SRA. That cost will currently fall on solicitors who fund the SRA without the guarantee of its being recouped. In addition substantial regulatory costs which may be suffered by the SRA as a result of failed and liquidated commercial alternative business structures will have to be ultimately borne by the majority of solicitors.

It is therefore highly arguable that the profession of solicitors will be better served and protected in the long-term by distancing itself from commercially owned legal suppliers and their regulation.