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BUSINESS STRUCTURES

The Future of Legal Services



Profile of Legal Services Professionals in New South Wales, Australia

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THE FUTURE OF LEGAL SERVICES

PROFILE OF LEGAL SERVICES PROFESSIONALS IN NEW SOUTH WALES, AUSTRALIA

Both England and Wales and Australia, where Alternative Business Structures (ABS) has been implemented, offer useful comparators to Ontario. The similarities are a shared common law heritage, the presence of representative bodies that regulate the professional standards of members, and a similar composition of legal professionals. A significant difference between Ontario and these other jurisdictions is that paralegals, which are integral to the delivery of legal services, are not regulated as they are in Ontario.¹

This memorandum has a particular focus on New South Wales (“NSW”); however ABS has been implemented in other Australian jurisdictions including Victoria and Queensland.

The Australian and NSW Legal Services Markets

In 1999/2000, Australia’s legal services exports were valued at \$194 million, and were the second highest export of professional and technical services, behind engineering services. Australia enjoyed a \$136 million trade surplus for legal services, which marked the highest surplus of professional and technical services. Larger solicitor firms were responsible for most legal services exports.²

NSW, on Australia’s east coast, is the country’s oldest and most populous state (7.4 M residents). More than a third of Australians live in NSW. Sydney, NSW’s capital, is Australia’s largest city (4.67M residents) and has been described by the Attorney General for Australia as “the dominant player in the Australian legal services market”.

In contrast, the population of Ontario on July 1, 2013 was 13,537,994. The population of Toronto was 5,959,405.³

Profile of Legal Professionals in New South Wales

As of June 2012, there were just over 24,585 active solicitors registered in NSW, with the following characteristics:

- Nearly 70% are in private practice, 18.5% in corporate settings, and 11.5% in government;
- Just over half (52.14%) practice in cities, 30% in suburban settings, and nearly 13% in country areas; and,
- 53.14% (13,065 of 24,016) of NSW solicitors are male. However, in the under 35 category, 64.3% (5,368 of 8,382) of solicitors are female.⁴

¹ Legal Education and Training Review, *Setting Standards: the Future of Legal Services Education and Training Regulation in England and Wales*, June 2013, paragraphs 3.102, 3.103 and 3.104, online at <http://letr.org.uk/wp-content/uploads/LETR-Report.pdf>.

² Law Council of Australia, “What is the export value of the legal services industry?” online: <http://www.lawcouncil.asn.au/lawcouncil/index.php/12-resources/232-what-is-the-export-value-of-the-legal-services-industry>.

³ Source: *Ontario Fact Sheet May 2014*, online at <http://www.fin.gov.on.ca/en/economy/ecupdates/factsheet.html>.

⁴ Law Society of NSW, *2013 Annual Report*, available for download online at <http://www.lawsociety.com.au/about/organisation/annualreports/index.htm> (Profile), p. 4.

The number of NSW bar association members with a practising certificate has increased from 1864 in 2001, to 2192 in 2012. Just over 80% (1754) of NSW barristers are male.⁵

Profile of Legal Professionals in Ontario

According to the 2013 Law Society of Upper Canada Annual Report, there are 46,054 lawyers in Ontario and 5,942 paralegals. Of these lawyers, 22,938 are in private practice.⁶ Fifty-nine percent of Ontario lawyers are female and 41% are male. Half of Ontario lawyers practice in Metropolitan Toronto and 42% elsewhere in Ontario. Forty-one percent of Ontario paralegals are male and 59% are female. Thirty-eight percent practice in Metropolitan Toronto and 61% outside Metro Toronto.⁷

Business Structures

Incorporated Legal Practices (“ILPs”)

“Incorporated Legal Practice” are law firms incorporated under ordinary company law. There are no restrictions with respect to the ownership of an ILP; nor are there restrictions with respect to the type of business that can be carried on.

Today there are over 1,200 approved ILPs in NSW, representing roughly 30% of all legal practices in NSW. Steve Mark, previously the Legal Services Commissioner for New South Wales, notes that most of these ILPs are either sole practitioners or firms with 3-10 partners. However, several medium-sized practices and national firms have also incorporated.⁸ ILPs take various forms, including:

- Multi-disciplinary practices (MDPs):
 - o As at November 2010, there were only approximately 30 MDPs in NSW;
 - o Examples include lawyers providing legal services together with real estate agents or financial advisors.

- Publically traded law firms:
 - o Slater & Gordon, a Melbourne, Victoria- based law firm with particular expertise in class action litigation and personal injury law, became the world’s first publically listed law firm. The firm worked closely with the NSW Office of the Legal Services Commissioner to ensure that the firm’s prospectus and other required materials indicate that the firm has a primary duty to the court, followed

⁵ NSW Bar Association, 2012-2013 Annual Report, online: http://www.nswbar.asn.au/docs/resources/publications/ar/ar_13.pdf.

⁶ This statistic is current to November 18, 2013.

⁷ Law Society of Upper Canada, *2013 Annual Report*, online at <http://www.annualreport.lsuc.on.ca/2013/en/the-professions/membership-statistics.html>.

⁸ Steven Mark, “Commercialisation of Legal Practice – Regulatory Reflections from NSW”, Commonwealth Legal Conference, April 21, 2012, online at http://www.olsc.nsw.gov.au/agdbasev7wr/olsc/documents/pdf/commericalism_of_legal_practice_clth_law_conference_april2012.pdf.

by its clients, and thereafter to its shareholders.⁹ Slater & Gordon entered the U.K. legal services market in 2012 by acquiring a U.K. firm.

- Integrated Legal Holdings (“IHL”) is also listed on the Australian Stock Exchange. Its four business units are legal services; online legal services, including training and education products; corporate advisory services; and wealth management.¹⁰
- Shine Lawyers has been historically focused on personal injury litigation. It has expanded into professional negligence, human rights, environmental cases, land owner rights, and class actions.¹¹ Shine’s prospectus also provides that the firm has a paramount duty to the court first, and then to its clients.¹²

⁹ Steven Mark & Tahlia Gordon, “Innovations in Regulation – Responding to a Changing Legal Services Market”, 22 *Geo. J. Legal Ethics* 501 (2009).

¹⁰ <http://www.ilh.com.au/>.

¹¹ <http://www.shine.com.au/>.

¹² “Newly listed Australian law firm plans to follow Slater & Gordon to UK”, *Legal Futures*, May 20, 2013, online at <http://www.legalfutures.co.uk/latest-news/newly-listed-australian-law-firm-plans-follow-slater-gordon-uk>.