



Subcommittee on Draft Subsidiary Legislation Relating to the Civil Justice Reform

1. The Law Society's position on CJR

The Law Society convened a Working Party to consider CJR in September 2000, and issued its *Report on Civil Justice Reform* ("Report") on 25 April 2002. This *Report* set out the Law Society's own recommendations and where appropriate incorporated commentary on the proposals published by the Chief Justice's Working Party on Civil Justice Reform dated November 2001. The Law Society supported the need for reform, but argued against wholesale reform along the lines of the Woolf reforms in England and Wales, and instead advocated that reforms (including "cherry-picked" successes from the reforms in England and Wales) should be grafted onto the existing rules.

The *Report* noted that:

"...the Law Society has concluded that retaining the existing civil procedures and rules in Hong Kong [is] in the best interests of the public and justice. The Law Society has nonetheless identified areas in which it considers reforms are required and has recommended appropriate changes to the procedures and rules in order to achieve the objectives of making dispute resolution more cost effective and expeditious.

Both the [Chief Justice's Working Party on CJR] and the Law Society acknowledge the need for amendment of the civil rules and procedures; in some instances both bodies have identified similar areas in which changes should be made.the Law Society favours a more rigorous implementation of the existing rules and procedures, but with radically new approaches to some matters – e.g. taxation of costs.

Some of the reforms proposed by the Law Society are radical; others are conservative, especially in relation to significant amendment of the existing rules. The Law Society is of the view that many of the existing rules are capable of more exacting interpretation and application by Judges and Masters and that a more robust approach must be adopted by Judicial Officers to apply those rules".

In the event, the Judiciary also chose not to advocate a wholesale adoption of the Woolf Reforms but opted to retain the existing civil procedure system with appropriate "cherry-picked" reforms. The legislation has followed that principle. The Judiciary adopted the majority of the Law Society's recommendations.

The Law Society had expressed reservations about some of the changes which have ultimately been adopted (for example, statements of truth), and equally some of the changes which the Law Society advocated were not adopted (for example, on taxation of costs). However, the Law Society believes that, taken as a whole, the changes are a move in the right direction, and in particular we are pleased that they adopt the accretive cherry-picking approach put forward by the Law Society rather than a root-and-branch abandonment of the old law in favour of a wholly new regime.

2. Subsidiary Legislation

The Judiciary subsequently issued two consultation papers: “*Consultation Paper on Proposed Legislative Amendments for the Implementation of Civil Justice Reform*” dated April 2006, and “*Revised Proposals for Amendments to Subsidiary Legislation under the Civil Justice Reform*” dated October 2007.

The Law Society responded with submissions concerning the proposed amendments in July 2006 and November 2007 respectively. In general, those submissions concentrated on the detail and mechanics of how change should be made, and did not seek to re-open issues of broad principle.

The Law Society Working Party has reviewed the legislative proposals from the standpoint of practitioners, with a view to ensuring that they are clear and workable. We have provided detailed comments in our submissions for that purpose. Because of the limitations on our resources, our review does not purport to be exhaustive. In particular, we have not attempted to identify errors of detail or consistency.

3. Preparing for the CJR

The Law Society accepts there will be a “learning curve” for all stakeholders, including solicitors, when the CJR is finally implemented. All practitioners will need to familiarise themselves with the changes. In order to assist its members both the Law Society and the Bar Association will be providing additional training on the reforms during the second half of this year.

The Law Society of Hong Kong
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