

**February 13, 2021 Crispin Passmore to SCOPE Subcommittee:**

The point I would like to make is my concern at the thinking on scope of a sandbox.

I want to challenge us on the core purpose of the sandbox. It is not to test specific innovations and structures. The core purpose is to collect evidence on the effectiveness of rule 5.4 - is the extent to which it protects ethics and hinders access to justice. We can only do that by 'letting go'.

In particular I am concerned at the idea that we think the members of the working group are best placed to decide which innovations we will allow, what sorts of structure or firm we expect to see, and am concerned that we could put special conditions on certain types of innovators that we do not put on lawyers and law firms (such as they must do access to justice work alongside corporate work).

Such an approach will be ineffective. It sets up the State Bar to fail - its as if we know best how to innovate, what innovations are possible and what customer priorities and preferences are. Innovation is most likely if we create the conditions for it and set the ethical standards. We do not need to prescribe and do not need to predict. we need to run an experiment and collect evidence on the how removing certain rules could benefit access without damaging ethics. A regulator's job is to set standards in the public interest and not to constrain competition or protect existing business models.

Moreover it is self defeating to try and exclude sandbox participation where it is focused on better off clients or larger businesses. All that achieves is to hamper the competitive response of lawyers and law firms to alternative providers that are already in the market.

We need a more imaginative starting point. That is that a sandbox is as much about setting or even raising standards among alternative providers so that lawyers as it is about new innovation. And it is as much about removing restrictions so that existing lawyers and firms can compete with alternative providers as it is about letting the alternative providers into the legal market.

Our working group needs to understand that the alternative providers are already in the legal market. Axiom is over 20 years old. United Lex and Elevate are growing fast. They are competing with lawyers and traditional law firms, they are employing lawyers and they are delivering for corporate and in-house teams. They get the free run of operating outside regulation whereas rules such as 5.4 restrict lawyers and law firms from competing in response. That is not only bad for the client (who value choice and innovation) but it is bad for lawyers.

I urge the working group to lift its eyes to the horizon, away from an inward looking interpretation of the challenge we face. A sandbox is about innovation and we need to innovate to make that happen.