

Legal Profession Amendment (Incorporated Legal Practices) Bill 2000

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Legal Profession Act 1987* to enable solicitors to incorporate their legal practices.

The principal features of the Bill are as follows:

- (a) An incorporated legal practice may be a company incorporated under the *Corporations Law*, an industrial organisation incorporated under Commonwealth or State law or any other body of a kind prescribed by the regulations.
- (b) Any such company, organisation or body may carry on any other business (other than a managed investment scheme).
- (c) At least one director of an incorporated legal practice must be a solicitor with an unrestricted practising certificate (a *solicitor director*). The solicitor director or directors are to be generally responsible for the management of the legal services provided in New South Wales by the incorporated legal practice.
- (d) Professional disciplinary proceedings may be taken against a solicitor director in connection with a failure to carry out that management responsibility and in connection with other failures to report and deal with misconduct by employed solicitors or other directors of the incorporated legal practice.
- (e) The Law Society Council is given powers to assist in supervising incorporated legal practices, including the power to bring proceedings before the Supreme Court for an order prohibiting a person from being a director or officer of a corporation that is an incorporated legal practice, investigative powers with respect to all the affairs of a corporation, the right to be a party to proceedings involving the external administration of a corporation and the power to disclose relevant information to ASIC.
- (f) The Law Society Council and the Legal Services Commissioner are given power to conduct reviews into the compliance of an incorporated legal practice with relevant requirements relating to the provision of legal services.
- (g) Solicitors who provide legal services as officers or employees of an incorporated legal practice are to retain the professional obligations of a solicitor (including with respect to duties to the court, conflicts of interest, duties of disclosure to clients and ethical rules) and will not lose the professional privileges of a solicitor (including with respect to legal professional privilege).
- (h) Incorporated legal practices will be required to contribute to the Solicitors' Mutual Indemnity Fund and payments to meet the professional liability of an incorporated legal practice and its employed solicitors will be authorised from that Fund.
- (i) Incorporated legal practices will be required to contribute to the Solicitors' Fidelity Fund and payments to reimburse clients for a failure to account by the practice or a dishonest default by the practice will be authorised from that Fund. In addition, provision is made to ensure that the vicarious liability of an incorporated legal practice in connection with failures to account and dishonest defaults by its employees is no less extensive than it would be if the solicitors engaged in the practice were carrying on business in partnership.
- (j) In the exercise of any jurisdiction under the external administration provisions of the

Corporations Law in connection with an incorporated legal practice, the court will be empowered to have regard to the interests of the clients of the practice even if they conflict with the interests of the creditors or shareholders of the practice.

- (k) The provisions relating to incorporated legal practices will prevail over any inconsistent requirement of the *Corporations Law*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Legal Profession Act 1987* set out in Schedules 1 and 2.

Clause 4 is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 3.

Schedule 1 inserts Division 2A into Part 3 of the *Legal Profession Act 1987* to provide for incorporated legal practices as outlined above.

Schedule 2 makes consequential and other amendments to the *Legal Profession Act 1987* relating to incorporated legal practices.

Schedule 3 makes consequential amendments to other Acts.