

Deregulating of the Profession

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Multidisciplinary Practices

Multidisciplinary practices (MDP's) are also being considered which would allow lawyers to practice in conjunction with accountants or other professionals (possibly including real estate agents, engineers, financial planners, etc).

The extent and regulation of MDP's is still being determined though the concept is supported by the Law Society.

Limitation of Liability for Damages

In addition to having effective limited liability companies under the *Corporations Law* there is a further proposal to limit lawyers liability for damages by either:

(a) Capped Liability:

In which lawyers may participate in a scheme requiring minimum insurance coverage of a particular level, require their affairs to be arranged to minimise exposure to risk and to pay a compulsory levy to a Solicitors Mutual Indemnity Fund and advising in all correspondence of their limited liability, in return for which the liability of lawyers for any transaction would be limited to the amount of their insurance.

(b) Proportionate Liability:

Proportionate Liability is a scheme which may stand alone or also allow for a Capped Liability scheme. In the Proportionate Liability scheme a lawyer would only be liable for damages in that proportion to which the lawyer contributed to the damages. That is, the law would prevent full recovery from the lawyer and then require the lawyer to seek contribution from those parties to be found contributory negligent.

This issue is still being debated at the national level. The Law Society supports some form of limitation of liability.

Reservation of Legal Work

Pursuant to the current laws a person who is not a lawyer may not:

- prepare the following class of documents:
 - wills and other testamentary instrument; and
 - an instrument creating or regulating rights between persons or relating to real or personal property or to a legal proceeding (s 132 of the *Legal Practitioners Act*);
- apply for a grant of probate (s 133 of the *Legal Practitioners Act*);

- represent persons in Court (s 75 of the *Supreme Court Rules* and Rule 1.14 of the *Local Court Rules*).

It is proposed that the only work reserved for lawyers should be Court work, advice on prospects and proposed or pending litigation and advice on the legal aspects of contentious matters before litigation is proposed.

All other legal work (which is primarily wills and probate, commercial law and including conveyance, leasing, sale of business) would be open to non lawyers.

Regulation of competitors to lawyers in the legal services market is a matter of public concern. However, the position of the Law Society is that it supports open competition. If there are concerns about consumer protection in relation to non-lawyers providing legal services that is an issue for the government of the day and the Law Society will make submissions on such regulation at the appropriate time.

The opening up of legal work is seen as the inevitable result of the *Competition Policy Reform Acts* (and Part IVA of the *Trade Practices Act*) and the aim of the ACCC. Further, it is governments and not lawyers who have reserved certain kinds of work for lawyers.

Removal of Costs Limitations

Currently Part X (ss 119-130) of the *Legal Practitioners Act* deals with the issues of costs charged by lawyers and taxation. Essentially it allows for a lawyer and a client to enter into a costs agreement (s 129) under controlled circumstances but in all other events for a client to have a right to tax a bill in accordance with the Supreme Court Scale.

The view of the Law Society is that it is inappropriate for the fees charged by lawyers for non-litigious work (commonly called commercial work) to be regulated by Part X of the *Legal Practitioners Act* because:

- (a) if lawyers are to compete in an open market then there should be no limitation upon the fees charged by commercial lawyers for non-litigious work. Their charges should be governed by the market; and
- (b) the Supreme Court Scale is essentially designed for litigation matters and does not properly contemplate the practice of commercial or non-litigious law.

Conclusion

The alterations to the structure of the legal profession discussed above would constitute a major change in legal practice in the Northern Territory. The Law Society supports a deregulation of the legal profession with returns to both consumers and lawyers.

Papers are available on each of the above and may be obtained from the Law Society by anyone wishing to obtain further information on any of the above issues.

A seminar will be held by the Law Society in March 1999 for all legal practitioners to present the fundamental reforms taking place (and the arguments against them). It is hoped that all practitioners will attend or be represented.

Following the seminar the Law Society proposes to make submissions to the Attorney-General about the proposed changes in the structure of the legal profession.

Magistrate Appointment

On December 4, 1998, Lyn McDade was appointed relieving Magistrate for six months.

Mrs McDade was not only chosen for her extensive experience in law, but also to assist the court with an influx of cases before the Magistrate.

Mrs McDade's background to date has essentially been working for the Australian Army Legal Corporation as both defense counsel and prosecution.

On resignation from the Australian Army, Mrs McDade and her family moved to Darwin in January 1996 to take up the position of NT Police Prosecution.

In July 1998, Mrs McDade was appointed deputy coroner, a position she still does in conjunction with magisterial duties.

Mrs McDade will be relieving in the Magistrates Court until early June.