

President's Column

On Friday, 11 June 1999 the Law Society of the Northern Territory will hold a seminar on the National Legal Services market and deregulating the profession.

The seminar will be an important one. Among the issues to be considered will be deregulation of the ways in which lawyers are entitled to organise and structure their legal practices.

The organisation and structure of legal practices should be based on the following simple principles:

- a) that the regulatory regime should be directed to the individual lawyer who is bound by ethical obligations and professional responsibilities;
that regulation of business structures should no longer be regarded as critical or necessary to the maintenance of professional standards; and
- c) that individual lawyers should be free to choose the manner and style in which they wish to practise law, so long as their choices do not threaten harm to the paramount public interest in the administration of justice.

At present lawyers' business practises are generally regulated by the existence of two provisions:

1. a prohibition on sharing any profits from a legal practice with non-lawyers;
2. bans on the type of business structure through which a legal practice may be conducted.

36 of the Legal Practitioners Act (NT) prohibits profit sharing with non-practitioners except for former partners. Incorporation is allowed, but directors must be practitioners or their immediate family and have unlimited personal liability for the company's liabilities. The voting shares must be held by directors, whilst non-voting shares may be held by directors or their immediate family. The corporate body itself, if formed as an except proprietary company with limited liability, is in the same position vis a vis its creditors as any company formed under the Corporation Law except the directors are deemed to have guaranteed all of the company's debts.

In addition, legal practitioners have significant ethical and fiduciary obligations imposed on them and have their fees regulated by the courts. Such provisions are at odds with common practice in commercial ventures in Australia.

The provision of legal services is, as a practical matter, no longer confined to qualified practitioners subject to the Legal Practitioners Act (NT). Legal services are also provided by accountants, banks, merchant banks, trustee companies and indeed anyone who wishes to provide legal services which do not strictly fall within the definition of legal work under the Act. There is a further considerable amount of legal work carried out by non lawyers contrary to the Act but which is beyond the resources of the Law Society to police.

Such providers are not subject to the rigours of the statutory and regulatory controls which apply to legal practitioners. They also have a major advantage, namely they can adopt a limited liability corporation as their business structure. Yet legal practitioners are expected to compete with other legal service providers who are not so restricted. Further, lawyers are expected to provide their fees in a cost effective manner.

If it is appropriate in an open market place for legal services, it is also appropriate they have the same rights of choice of business structures as their competitors. It is unreasonable that solicitors are denied the right to limited liability incorporation.

Such deregulation is likely to reduce the cost of overheads and lead to better management structures and a better and more extensive service to the public.

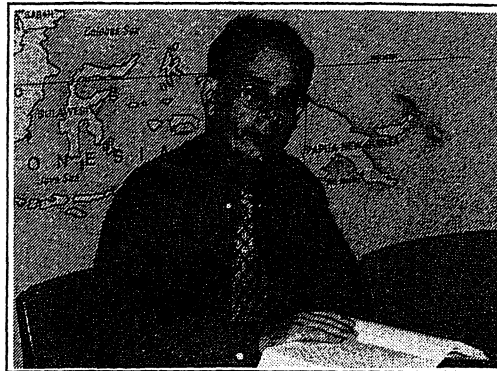
Granting legal practitioners the right to true limited liability incorporation would not reduce their fiduciary or ethical obligations nor the professional standards as there would still be a regulating regime in place directed to the individual lawyer who would continue to be bound by ethical obligations and professional responsibility.

The underlying philosophy of such an approach is to remove existing restraints on the capacity of the legal profession to compete with other such providers while continuing to place paramountcy on the maintenance of lawyers' ethical obligations and professional responsibilities.

Legal Aid

On 21 April 1999 National Legal Aid will hold a forum entitled Towards 2010.

The forum, to be held at Old Parliament House, Canberra, will examine the steps necessary to ensure enhancement of a fair Australian Justice System.



Steve Southwood, President

It has become necessary to hold such a forum because nationally the legal aid system is facing increasing demands and shrinking resources. However, if we are to have a fair justice system which looks after disadvantaged Australians, as you would expect of any civilised society, it is fundamentally important that in the next millennium the Commonwealth Government provides appropriate funds and that legal aid resources are not permitted to continue to shrink.

Significantly for the Northern Territory the closing speaker will be Richard Coates.

YOUNG LAWYER AWARD

Nominations Invited

Applications and nominations are now being called for the 1999 Australian Young Lawyer Awards.

A biennial event, the Awards aim to encourage young lawyers' associations and individual young lawyers, to develop and implement projects for the benefit of the legal profession and/or the community.

The Awards are judged in three categories: professional issues, community issues and individual contributions.

Applications and nominations for the Awards will close at 5pm (AEST) on Friday 3 September 1999. The recipients of each category of the Awards are expected to be announced at the 31st Australian Legal Convention in October.

For further information, application forms, and rules governing the Awards, contact *Mr Gerard O'Neill* at the Law Council of Australia Secretariat.

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