

Incorporated Legal Practices and Multi-Disciplinary Partnerships

Josephine Stone (Complaints Investigations Officer) and I recently attended the Regulatory Officers Conference in Melbourne

One of the most interesting presentations was by Charles Cawley (NSW Law Society) and Stephen Mark (NSW Legal Services Commissioner) about their experiences with Incorporated Legal Practices (ILPs) and Multi-Disciplinary Partnerships (MDPs).

This legislation was introduced in New South Wales a couple of years ago. The Northern Territory's Legal Practitioners Amendment (Incorporated Legal Practices and Multi-Disciplinary Partnerships) Act has not yet commenced but will hopefully be in place by 1 January 2004. To some extent, the NT legislation is modeled on the NSW provisions.

In NSW, MDPs appear not to be particularly popular as it is used as a device to incorporate interstate partners into a firm.

However, 270 ILPs have been set up to date and around 50 further applications are pending. Most of the practices setting up as ILPs have been smaller ones, though it is understood that bigger practices are also becoming interested. There has been talk of some banks and credit unions setting up as an ILP with a lawyer director to offer legal services in some areas. So far this is yet to come to fruition.

There are a number of advantages seen in establishing ILPs. As I am (thankfully) not an accountant, I cannot comment on the financial or other advantages of these approaches and neither the Law Society nor myself is purporting to provide financial advice, however reasons for setting up an ILP include:

* Staff can become shareholders;

- * It is easier to disengage equity partners;
- * Tax issues including income splitting and paying salaries;
- * Ability to use corporate veil;
- * Some see it as good for business; and
- * Some practices have set up as partnerships consisting of a number of ILPs.

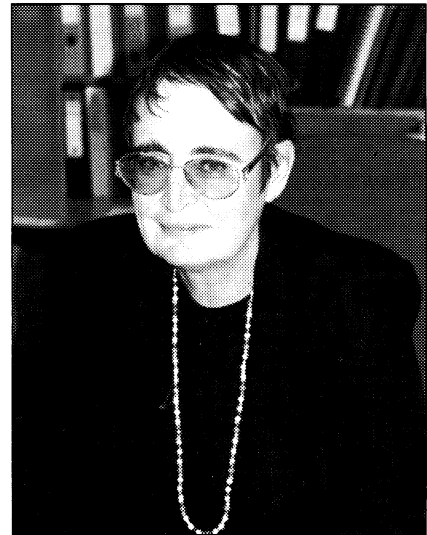
Currently, the Legal Practitioners (Incorporation) Act allows for a form of incorporated practice. These should be relatively easy to transfer to the new legislation, when it commences.

NSW has identified some issues and concerns in the development of ILPs in particular.

One is the ability of ILPs to adopt the management practices required under the new legislation – failure to do so could constitute professional misconduct by the solicitor director. NSW is working on this issue and has prepared a schedule of areas to be addressed so that the requirements of the legislation are satisfied and, hopefully, complaints are generally reduced.

Very strict compliance obligations are placed on lawyer directors – there needs to be education regarding professional responsibilities.

Other issues include problems in



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lifting the corporate veil and finding out who shareholders are. There are also concerns that a stooge solicitor director could be appointed and then if something goes wrong a new entity is created with another stooge director.

Another issue is the impact on Professional Indemnity Insurance. If a claim is made in respect to the ILP or MDP's other activities. What will happen in the case of a borderline activity? Will it increase exposure for PII insurers and what action will they take?

These are just some of the issues that the Law Society will be following.

The NT Government is currently developing regulations. *Balance* is looking at getting a local accountant to write an article on some of the tax implications of the legislation. It would be desirable for the NT legislation to commence as soon as possible.

It would appear that in spite of the issues raised and problems identified in NSW that the ILP structure is becoming increasingly popular with the legal profession. 1