Speech by

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QUEENSLAND LAW SOCIETY AMENDMENT BILL

Mr BEANLAND (Indooroopilly—LP) (5.28 p.m.): In speaking to the Queensland Law Society Amendment Bill, I point out that many of the people who enter into the types of investments addressed in the Bill put all of their assets, apart from their home, into this area. In other words, this is their sole investment. Unfortunately, in the past, people have believed that, because they were investing through a solicitor and because the investment was in bricks and mortar, it was secure. As we know, such investments can come apart, and that is what we are discussing today.

People put various amounts of money into these investments. Some invest only a few thousand dollars; others invest hundreds of thousands of dollars. In either case, this can be the sole investment into which people put whatever assets they have apart from their residential home. I recollect that some time ago the other States were getting into trouble in this area. It does not surprise me that this issue has come home to roost in Queensland. Prior to May 1996 I was not aware that such large sums of money were tied up in these types of investments. Across the State, particularly on the Gold Coast, which has already been mentioned, to a lesser extent on the Sunshine Coast and also in Brisbane, some hundreds of millions of dollars were invested.

I still find that many of the complaints that people make about solicitors relate to this area. In fact, about 80% to 90% of complaints relate to this type of investment offered through solicitors. Nevertheless, I was shocked to see this legislation being introduced. Whether we like it or not, the State has a moral obligation in this area. Unfortunately, we have allowed this to go on unchecked. I accept what the Minister said in his second-reading speech. He has obviously held discussions with the Law Society and they have come to an agreement that it is reasonable for the Law Society Council, in accordance with its previous practice, to not impose the cap on claims of $60,000 per practitioner. I understand that that cap has never been enforced. That is my recollection. The Minister can indicate otherwise in his reply. If that is not the case, I am not sure when it was enforced. As far as I am aware, it has never been put into practice. It is unfortunate that that $60,000 cap is in place. I am sure any full-scale review of the Law Society and the Legal Practitioners Fidelity Guarantee Trust Fund would recommend its removal. This relates to the general issue, which I will touch on further in a moment, of the way in which interest on solicitors' trust funds is treated.

Also, under the Bill the claims in respect of investment loans are not to be met to less than the principal after allowing for amounts paid, that is, interest payments are now part of principal, as the shadow Minister indicated. That is unfortunate. Other allowable claims are to be paid in full unless there are other special circumstances.

As I indicated, this whole area came to my attention only in May 1996. Prior to that time I was unaware of the amount of money invested in this area. At the time, the Government moved to rectify the problem as best it could. As I recall, there was a fair bit of abuse of yours truly because of the action taken at that time; some legal practitioners felt that they had some right to continue as they had over a number of decades, particularly in the late eighties and early nineties, which seems to be the era in which this practice took off. They felt that they should be allowed to continue. Certain provisions were

put in place then in relation to what was covered and what was not covered. This is not the normal business practice for a solicitor.

The Legal Practitioners Fidelity Guarantee Fund was established in 1930 to reimburse people who suffer pecuniary loss as a result of stealing or fraudulent misappropriation by a solicitor of any money or property entrusted to the solicitor in the course of his or her practice. It was established at the request of the legal profession at that time, which recognised that defalcation by a solicitor reflects on the whole of the profession. It wanted to ensure that there was a fund to reimburse innocent victims. I understand that. What a change there has been since 1930 in terms of this type of practice.

What was contemplated in 1930 as a solicitor's practice is very different from some practices some solicitors engage in today and engaged in back in the early nineties and late eighties. It is estimated that some hundreds of millions of dollars are currently invested in contributory mortgages arranged by solicitors in Queensland on behalf of their clients. The money invested in these investment loans, or contributory mortgages, through solicitors is inherently no more at risk than any other money or property entrusted to a solicitor. As far as I am aware, in 1996 there was no indication that any funds invested in mortgages were in any danger at that time, and I made a note to that effect. This has not been the traditional role of solicitors. That was the issue then. I am sure that is something which the Attorney-General is now relying upon for this course of action. The legislation in May 1996 applied from that date. It was not made retrospective. As my colleague the shadow Minister pointed out, what we are doing is bringing in retrospective legislation. There is no denying that.

I maintained then and I still maintain that this work undertaken by solicitors is more along the lines of that of an investment broker. As I indicated back in 1996, the fidelity fund should not be expected to cover such losses. However, we did not make the legislation retrospective, because we felt there was a moral obligation on the Government at that time to cover the situation that occurred up to that time. The purpose of those changes in May 1996 was to remove from the scope of the fund liability for any defalcation by a solicitor in connection with contributory mortgages in respect of which instructions are given by a client, after the date of commencement of that piece of legislation.

This legislation is taking a different course of action. The Minister indicated at the time—and he can correct me later if this is not the case; it is not harmful to his position—and all sides of the Chamber agreed that it was a matter for the Australian Securities and Investments Commission—ASIC—to look at this area. I remember spending a great deal of time putting pressure on ASIC to come up with a formula to cater for this area. Much to my shock at the time, I found out the amount of funds involved. Prior to that time, I never would have dreamt that lawyers were so heavily involved in the investment banking/financial securities area. Fortunately, I understand that ASIC has now become involved in this area. My colleague the shadow Minister indicates that I am right about this.

Mr Springborg: Over $5m.

Mr BEANLAND: That is right; over $5m. I do not keep track of these matters as I once did, because of my other shadow responsibilities. With three parliamentary jobs—and it is four, if we include looking after the electorate—it is hard to find enough hours in the day to keep track of matters such as this. Having said that, I am pleased to see that ASIC has now become involved and has imposed certain requirements. That is long overdue. Through its involvement, I hope that we do not find this situation occurring in the future. I do not believe that it does Government members or any other parliamentarian any good when these situations arise; a bitter taste is left in the mouths of the people affected by this.

Contrary to what I think some members of the Labor Party believe, many of these people are not wealthy. Some are far from being wealthy. As I said, some probably have only a few thousand dollars which they have invested in these schemes. I have asked people why they went down this track. They tell me that they believe investments in bricks and mortar are safe; that they felt safer also because a solicitor was involved; that they do not want their money in the share market, a bank or some other institution. These people have told me that they believe such investments are far safer and more beneficial than others.

Having said all those things, I must say that the Bill is nevertheless anti-consumer. I can understand the concern of those people. I am surprised that they are not speaking out more and that we have not heard more comments about this matter from those affected. I understand that there is one particular solicitor involved at the moment, but in time there could be others. As I recollect, tens of millions of dollars was lost in this fashion in New South Wales and Victoria. If I recollect correctly, the Government came to the party in both States. I think the Governments of those States may still be paying out the large sums of money involved. Someone can correct me as I am going on memory, but I am sure I am correct. In May 1996 I feverishly went about doing some very in depth investigations over a couple of weeks to try to sort out this matter at that time. I am sure it was some tens of millions of dollars in both States. I am sure that, in some cases, those Governments are still paying out that money.

The Governments in those States have accepted their moral obligation. I do believe that, regardless of who is in Government, the Government has a moral obligation in this regard, as unhappy as we might be about that. Nevertheless, these people through no fault of their own but with a belief in the system have been affected. I have not been privy to all the details surrounding this particular solicitor who has ripped these people off, although I am sure the Minister and the shadow Minister are aware of that information. But, as I understand it, through no fault of their own, they have been ripped off by this particular solicitor but the system has let them down. I do not think there can be any argument that that is the situation. Therefore, the Government has a moral obligation.

Currently, the amount involved in this particular case is $6.5m. I know that the Legal Practitioners Fidelity Guarantee Trust Fund has been having some difficulties. I recognised that when I was in office; the Minister recognised that in his second-reading speech. I accept that there is no easy solution to the problem, but in many respects that is a separate issue to this matter. Sure, it is the same issue when it comes to finding the money, but it is a separate issue in relation to the issues we are confronted with here. It is an issue to get the fund in credit and to get it looking after normal legal situations where there is defalcation. There is no question that that needs to be done.

The shadow Minister indicated that perhaps we need to look at the legal aid system. I know that Treasury will not like coming to the party with more funds. The interest from solicitors' trust funds has been used for legal aid purposes and to fund professional conduct investigations by the Queensland Law Society. I am not sure that that is the correct title for those investigations, but the title is something of that nature. The fund assists in paying for the cost of investigations into solicitors. So there are three areas that immediately come to mind for which the interest from that trust fund is used.

It seems to me that that is going to have to be looked at. Again, we cannot expect solicitors to continue contributing to further levies. I am not talking about those at the top end of town, I am talking about the ordinary suburban solicitor who, contrary to what many people might think, is not rich. In fact, many of them find the going very difficult indeed. They would be lucky to net $50,000 a year. That is the same with a lot of country solicitors. Of course some are doing much better than that, but I am talking about the average. I know a lot of people who are no longer practising in the law because they are unable to make a living out of it. Those at the top end of town in the big buildings around the city heart who deal with the big corporate clients are doing very nicely indeed; we are not arguing about that. I am talking about the average solicitor out there who is finding it tough and who is not able to continue to contribute large sums of money each time the Law Society calls for it. I do not pretend for a moment that they can.

There has to be a reckoning. One has to look closely at the fund and how it is going to be handled in the future. Treasury will have to look at this seriously, too. Clearly, consideration needs to be given to additional funding and the approach to be adopted in the future. This matter relates to the way the whole legal fraternity operates, but I do not want to get into that. Because it is not really relevant to this matter I do not want to get into a discussion on whether there should be more regulation, as suggested by the green paper circulated by the Minister, or more deregulation, which I was contemplating.

This legislation is retrospective. Even if one were to lift the ceiling on the fund from $5m to $10m overnight, that is not going to help this current situation or help in other situations for some time to come, because the income will not be coming in. I am sure that the Minister, the Government and the Department of Justice are certainly aware of that.

Clearly, this has been an issue that has been going to happen for a while. I hoped back in 1996 that it would not occur because of the changes we made then but, nevertheless, I expected that at some stage the Government would be faced with a moral obligation to find some millions of dollars—not to the same extent of New South Wales or Victoria—to pay out at some stage. The fact is that that time has now arrived. The Government is tackling it in a different way. As I say, I do not agree with the way in which it has been tackled, but that is a matter for the Government of the day. It is in Government; it has to legislate.

I do not think that it does any good to talk about the existing cap of $60,000. That has never been applied. It should go. I think it is just a nonsense; I remember telling someone that at some stage. The Government will have to look at this issue. This may not be the only case that will come forward but, at the end of the day, we have to keep in mind that many of these people involved are in fact battlers. They certainly qualify as being battlers. Most are not in the upper echelon. Sure, some of them might be, but the ones I have spoken to over time are battlers. This is their sole investment. They are finding it difficult, and of course they are going to find it a lot more difficult now that the payment of interest is to be treated as repayment of principal. I am therefore somewhat shocked to find this legislation coming forward.
