



Speech by

JACK PAFF

MEMBER FOR IPSWICH WEST

Hansard 8 December 1999

QUEENSLAND LAW SOCIETY AMENDMENT BILL

Mr PAFF (Ipswich West—ONP) (5.48 p.m.): I rise to speak on the Queensland Law Society Amendment Bill. I commend the Government and particularly the Attorney-General for initiating a review of the Queensland legal profession, particularly in the area addressed by this Bill. I understand that the impetus for this Bill is the financial state of the Queensland Law Society Legal Practitioners Fidelity Guarantee Fund and the very serious question of whether it is able to meet its commitments. These concerns have been brought to a head by recent events on the Gold Coast which have resulted in claims totalling \$6.5m. I wish to address the circumstances by which the affairs of the Queensland Law Society fidelity fund have come to such a sorry state. Let me begin at the beginning.

When a client of a solicitor deposits funds into the solicitor's general trust account, the client receives no interest or direct benefit from those funds. A form of imputed interest is paid directly from the bank to the Queensland Law Society. In the 1998-99 financial year, this amounted to approximately \$9.6m. This money, which is, in reality, the property of the individual clients of our legal system, is spent in the following way: \$30,000 for administration; \$480,000 for the Grants Fund; \$960,000 for the Supreme Court Library; \$960,000 for continuing legal education; and, last but certainly not least, \$7.2m goes to prop up our legal aid. Yes, members heard me correctly: a whopping \$7.2m of clients' money is siphoned off by the Government for legal aid.

Each solicitor has to make a deposit into a statutory deposit account. The size of this deposit is relative to the normal balance of a particular solicitor's general trust account. A portion of the interest earned from this account comprises the major source of funding for the fidelity fund. The interest is split fifty-fifty between the fidelity fund and, believe it or not, legal aid.

The break-up of funding for the fidelity fund in 1998-99 was as follows: \$84,000 in contributions from practitioners via the Queensland Law Society; and \$1.5m from statutory deposits accounts. The bottom line of all these figures is that clients' funds have been diverted, albeit legally, from legitimate purposes such as providing a form of insurance for clients to propping up legal aid. Using the private funds of clients in this manner is akin to theft. It is the sort of thing only a Government could hope to get away with. I might add that Governments of all persuasions have been doing this for many years.

The total sum of money generated each year by the various forms of interest paid on clients' funds in general trust accounts amounts to about \$12.6m—a sum of money which, if applied honestly, would be more than sufficient to meet any claims which have in the past been made on the fidelity fund.

The result of this misappropriation of clients' funds is that the fidelity fund has been struggling to meet its commitments for several years and has only succeeded in this because of voluntary levies applied by the Queensland Law Society to individual solicitors. What this means is that solicitors, unlike members of virtually any other profession or trade, are being called upon to pay for the mistakes or criminal activities of their competitors. This is a patently unfair and unworkable situation.

I propose the following steps to remedy this situation as it has not been addressed appropriately in the Bill before the House. I will be moving amendments during the Committee stage to reflect these changes. Firstly, the current cap on the fidelity fund of \$5m is far too low to allow the fund to build up sufficiently in good years to be able to weather the bad years. This is one of the main reasons the fund is in its current sorry state.

Next, all interest, by whatever name it is called, from trust account moneys is to be paid directly to the credit of the fidelity fund. None of this money belongs to the Government. The Government must accept that responsibility for the provision of legal aid and other services, guaranteeing fair access to the legal system, is its alone. Once the fidelity fund is self-supporting, it is to commence funding such things as the Supreme Court Library, continuing legal education, the Grants Fund and so on from the interest it earns on investments but not from its capital base.

Once the fidelity fund reaches a realistic minimum balance sufficient to meet foreseeable contingencies, surplus interest from general trust accounts may be used to fund legal aid. This commitment is to be reviewed on an annual basis, depending on the position of the fund. The fidelity fund is to be administered as a completely separate entity from the Queensland Law Society to avoid any argument over the split-up of administration costs.

Solicitors must disclose formally to any client who has funds in the general trust account for any reason the limitations of protection afforded under the fidelity fund. The Government is to reimburse the fidelity fund any moneys misappropriated for the propping up of legal aid sufficient to meet ongoing commitments of the fund until it is able to be self-supporting.

The Government is to retract from any future compulsory levies on individual solicitors for the purpose of funding any shortfall in the fidelity fund. These levies will not be required as the fidelity fund will be in a position to meet its ongoing foreseeable commitments. If a levy is imposed on solicitors, then it must be apportioned according to the risk that individual businesses pose to the fund. To this end, the levy must be applied to every solicitor who holds a practising certificate.

Current claims, such as those relating to a Gold Coast solicitor, should be met in full. That is, claimants should be paid from the fund the total amount of money they deposited into the trust account. However, they must not be paid any interest they may have lost due either to their own investment decisions or because of the failure of the solicitor to invest their funds appropriately. This generous position should end with the enactment of this legislation. From that time onwards, any claim on the fund which does not apply to traditional legal practice will not be considered.
