



Speech by

Hon. M. FOLEY

MEMBER FOR YERONGA

Hansard 26 August 1999

QUEENSLAND LAW SOCIETY AMENDMENT BILL

Hon. M. J. FOLEY (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (10.31 a.m.): I move—

"That the Bill be read a second time."

The purpose of this Bill is to address immediate concerns regarding the Legal Practitioners Fidelity Guarantee Fund. Other reforms relating to the fund will be further considered by the Government in the process of the reform of the legal profession with regard to the matters set out in the Government's green paper. The fund is constituted under the Queensland Law Society Act 1952 to reimburse persons who suffer pecuniary loss through stealing or fraudulent misappropriation of money or property entrusted to a practising practitioner or a practitioner's clerk or employee.

The current difficulties of the fund have been well publicised, with its costs exceeding available funds over a number of years. The previous Government established a working party to review the arrangements for the fund and that working group was continued under this Government. In the course of the review, the extraordinary claims of \$6.5m for the misappropriation of moneys placed with a former Gold Coast solicitor for investments in mortgage loans came to light.

The Council of the Queensland Law Society has discretion to pay claims in excess of the statutory cap of \$60,000 per practitioner where the assets of the fund permit. In recent history, claims have been paid in full with practitioners being levied for the shortfall. The levies were imposed as general levies under the society's rules and the levy moneys were loaned to the fund. This process was adopted because the Act limited amounts that the society could levy a practitioner directly for the purposes of the fidelity fund to \$20 per annum or \$100 in a practitioner's career.

The current position of the fund is as follows—

there are claims of \$2.9m on top of the \$6.5m in claims for the former Gold Coast solicitor;

available funds total \$512,000;

the fund has loans from the society funded by levies on practitioners totalling \$4.238m;

the society still holds in its general account \$1.85m from levies collected but not disbursed to the fund.

Faced with the current extraordinary level of claims, the council had formed the view that the assets of the fund did not permit the cap on claims of \$60,000 per practitioner to be exceeded. As this outcome would have been unfair and unexpected, the Government advised that it would be reasonable for the council to act on the following basis—

the council, in accordance with its previous practice, to not impose the cap on claims of \$60,000 per practitioner;

claims in respect of investment loans to be met at not less than the principal after allowing for amounts already paid;

other allowable claims to be paid in full unless there are other special circumstances;

the moneys previously collected as levies and held by the society to be immediately disbursed to the fund and the current loan of levy moneys to be forgiven; and

the society to again levy practitioners over one or two years to meet the current shortfall, with the claims to be paid by instalment, as necessary.

The council advised that amendments to the Queensland Law Society Act 1952 would be needed for it to act on that basis. Accordingly, the Bill removes the current monetary restrictions on levies on practitioners for the purposes of the fund and instead provides for the council to impose levies that are reasonable.

When considering whether the fund has, or will have, sufficient assets for the council to exercise its discretion to pay more than \$60,000 per practitioner, the Bill provides for the council to also have regard to the levies that might be imposed. In determining the amount to be applied in reimbursing a loss of moneys placed with a practising practitioner for investing in loans, the Bill provides that the council may have regard to the principal invested and deduct amounts received by the investor in respect of the loan. The Bill provides for the Minister to be able to direct the council in respect of claims and for levies to be able to be imposed by regulation.

At this point, it is with pleasure that I inform the Parliament of a significant development regarding the fund. I should like to table a letter that I have now received from the President of the Queensland Law Society advising of the council's resolutions in respect of the fund. The council has resolved to levy practitioners an amount sufficient to meet current claims against the fund in accordance with the provisions contained in this Bill. After a period of uncertainty, this demonstration by the council of its good faith in respect of the fund is most welcome.

As the intentions of the council with respect to levies were previously uncertain, the Bill provided for levies on practitioners to be imposed by regulation. In light of the society's demonstration of its intentions and its consistent previous practice of levying practitioners when necessary to meet claims in excess of the statutory cap, I have no reason to expect that a levy by regulation will be imposed. Further, the provision for levies to be imposed by regulation will expire one year after its commencement.

The Bill also addresses the position of the previous levies imposed by the society and the resulting financial arrangements. To remove any doubt, the Bill validates those levies imposed by the council as payable into the society's general funds to enable it to give or advance an amount to the fund. It also provides for—

those levy moneys—including those still retained in the society's general funds—to be taken to be levies imposed under the fidelity fund levy provision and not to have been paid to the general account; and

an advance from the general fund arising out of or consequential to the levy to be taken not to have been made.

These adjustments to the fund's financial arrangements are considered to be justified in all the circumstances. Had the Act provided, as the Bill now proposes, for the council to impose reasonable levies for the purposes of the fund, a loan would not have been needed. Practitioners were levied for the purpose of satisfying liabilities of the fund. The society could have gifted the moneys to the fund. Gifting the levy moneys would have been reasonable in light of the moneys deducted from the fund by the society over the years for the costs of regulating the profession.

I consider these proposals to strike a fair balance in resolving the current difficulties of the fund. I am aware that claimants for investment loan losses object to the provision in the Bill which would allow the council the discretion in determining their claims to have regard to the principal only and deduct past amounts paid in respect of the loan. The amount that is paid to claimants would be at the discretion of council. As I have indicated, the Government considers that it would be reasonable for such claims to be met at not less than the principal less past payments in respect of the loans.

The Bill facilitates these factors being taken into account. Some discounting of these claims is considered reasonable given—

the current state of the fund;

the magnitude of the investment loan claims;

the fact that the moneys were placed with the solicitor for investment purposes and not in connection with traditional legal services;

the payments to such claimants under this proposal would be well in excess of the \$60,000 total that would otherwise be payable to all claimants per practitioner given the current state of the fund;

while the amount of the levy will be a matter for the council taking account of all the liabilities of the fund, an amount to pay investor loan claimants alone would equate to approximately \$650 per practitioner.

Practitioners would like the fund to be abolished and can be expected to complain at the prospect of again being levied. The fund provides some protection for consumers of legal services. The Government does not propose the abolition of the fund, but would prefer to see it emerge from its current difficulties and continue on a viable basis for the future.

It is reasonable for practitioners to pay some levy where the risk of loss is an incident of the legal services that they provide. Practitioners in New South Wales are required to make a substantial annual contribution to their fidelity fund, with a contribution of \$645 having been required in each of the last three financial years. In New South Wales, levies can also be imposed to meet shortfalls in the fund. At the same time, the fund is finite.

Solicitors' capacity to pay levies along with the other costs of regulation and practice is limited. The Government considers that it is unreasonable for the fund to be exposed to losses in respect of moneys placed with solicitors for investment purposes.

The Bill excludes persons from claiming on the fund for moneys placed with solicitors for investment purposes and not in connection with their traditional legal work. The provision confines claims to traditional legal services as would have been contemplated when the fund was established. This provision is consistent with the amendments in 1996 excluding persons from claiming reimbursement from the fund for moneys invested in solicitors' mortgage investment schemes. When making investments through solicitors, persons will need to take the same precautions as they would if transacting with any other person.

There is one further issue in respect of the fund on which I would like to comment. The Queensland Law Society is of the view that, for the fund to be maintained on a viable basis in the future, there needs to be a cap on the amount of individual claims. The Government's green paper on legal profession reform proposes capping the amount that the fund will pay to individuals at an amount that covers the upper end of amounts that could reasonably be at risk when the ordinary person engages a solicitor to act for them across a range of transactions. Discussions are continuing with the Queensland Law Society on an appropriate amount for the cap. This matter will be further considered by the Government in the process for reform following the green paper. I commend the Bill to the House.
