



Speech by

**Hon. M. FOLEY**

**MEMBER FOR YERONGA**

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Hansard 8 December 1999

### QUEENSLAND LAW SOCIETY AMENDMENT BILL

**Hon. M. J. FOLEY** (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (6.10 p.m.), in reply: I thank honourable members for their contributions to the debate. I acknowledge in the gallery a couple of people who have been the victims of the Gold Coast solicitor to whom reference has been made during the course of the debate. I extend to them the concern of all honourable members for the position in which they find themselves.

The Government could have chosen the path of doing nothing about this issue and simply leaving the law in its present state. Had the Government done so, it is clear that the entitlements of persons who are the victims of defalcation by solicitors would have been left in an unsatisfactory state. With the \$60,000 cap as part of the law, such people would not have been in a position to ensure that they recovered the funds that they had lost.

This Bill ensures that some proper measures can be put in place for people who are the victims of defalcation by solicitors. The Bill does not limit the discretion of the Law Society. Rather, it puts in place a framework that enables certain measures to be taken to provide compensation. That has come about following lengthy consultation throughout the State and following a process in which the Government has consulted with all the stakeholders.

Of course, this is part of the larger process of reforming the legal profession and finding some long-term solution to the problems confronting the Legal Practitioners Fidelity Guarantee Fund. The issue really comes down to two questions: firstly, should investments, as a matter of policy in the future, be covered by the Legal Practitioners Fidelity Guarantee Fund? The second question is: what is to be done about the problems that have occurred to date?

In relation to the first question, it is the Government's view that investment decisions should be made on the basis of a commercial transaction. There should be a distinction between such transactions and other work that is of a traditional legal character. Solicitors throughout the length and breadth of the State with whom I have consulted—with the concurrence of the present and former Presidents of the Law Society—expressed their concern, if I might put it in such modest terms, that they should have to fork out for the defalcation of others. Be that as it may, that is part of the responsibilities that come with the professional status of the legal profession. However, it is important to ensure that the Legal Practitioners Fidelity Guarantee Fund is confined to those matters of traditional legal work. This Bill does that.

The very difficult question is what is to be done in respect of the problem of the claims on the fund far exceeding the amount of money specified. The Government proposed the solution that is advanced in this Bill without in any way limiting the discretion of the Law Society. It put out this Bill for consultation and, on the basis of that consultation, the Bill came forward to the Parliament.

It has been disappointing to see the Opposition's reaction. Regrettably, the Opposition has taken an irresponsible approach and not faced up to the facts. What is the Opposition's solution to the problem? To increase the cap to \$10m. What does that mean? Firstly, it means that the Opposition wants taxpayers to pay more. If I accept the suggestion by the honourable member for Warwick, that is, changing the cap from \$5m to \$10m, essentially that would involve taxpayers paying \$5m more. The second implication of the Opposition's position is that solicitors should pay more. Regrettably, the Opposition has not actually spelled out in plain terms its solution. If the claims are to be paid in full, someone has to pay—either the taxpayers or the solicitors. It is the Government's view that this is not

the responsibility of taxpayers; it is primarily the professional responsibility of solicitors and the Law Society. However, the demands on the fund are very considerable indeed and outweigh greatly the amount of money available in the fund.

The honourable member for Indooroopilly says that there is a moral obligation on the State. That is true in one sense. However, it is not clear from the honourable member's otherwise reasonably thoughtful contribution whether he means by that that the State should pay—that the taxpayers should pay. If so, that is a surprising and extraordinary proposition to come from the honourable member.

The honourable member also made the point that the \$60,000 cap is antiquated, and I agree wholeheartedly. As we set out in the Green Paper, the Government proposes to increase that amount significantly. We have put out a figure of \$1m and that has been the—

**Mr Springborg:** There shouldn't be a cap.

**Mr FOLEY:** The honourable member says that there should not be a cap. The issue is: how does one guarantee the actuarial basis of the fund? Certainly, it is the case that there should always be a discretion to exceed the fund. Regrettably, the members opposite— from the luxury of Opposition—have simply failed to face up to the practical problem. They have fudged it. They have not spelt out in plain terms the necessary implication of their position, namely that taxpayers should pay the way out of the problems and that solicitors should pay more than the \$650 that is contemplated will have to be levied on each solicitor.

The Government considered a range of matters, including the current state of the fund, the magnitude of the investment loan claims and 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 that would otherwise be payable to all claimants per practitioner, given the current state of the fund. Although the amount of the levy on practitioners would be a matter for the council, taking account of all the liabilities of the fund, the amount to pay investor loan claimants alone would equate to approximately \$650 per practitioner.

This is balanced legislation. It deals with a difficult problem that, regrettably, the Opposition does not wish to face up to. This Bill addresses the competing interests and tries to ensure that we have a system in place to provide a fair and equitable basis for compensation for those persons who have been the victims of wrongdoing by solicitors.

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