



New South Wales

Legal Profession Amendment (Incorporated Legal Practices) Act 2000 No 73

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New South Wales

Legal Profession Amendment (Incorporated Legal Practices) Act 2000 No 73

Act No 73, 2000

An Act to amend the *Legal Profession Act 1987* with respect to incorporated legal practices; and for other purposes. [Assented to 8 November 2000]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Legal Profession Act 1987 No 109

The *Legal Profession Act 1987* is amended as set out in Schedules 1 and 2.

4 Amendment of other Acts

The Acts specified in Schedule 3 are amended as set out in that Schedule.

Schedule 1 Principal amendment

(Section 3)

Part 3, Division 2A

Insert after Division 2 of Part 3:

Division 2A Incorporated legal practices

47B Definitions

In this Division:

corporation means:

- (a) a company within the meaning of the *Corporations Law*, or
- (b) a State owned corporation, or
- (c) an industrial organisation incorporated under a law of the Commonwealth, a State or a Territory, or
- (d) any other body corporate, or body corporate of a kind, prescribed by the regulations.

director means a director within the meaning of the *Corporations Law*.

legal services means work done, or business transacted, in the capacity of a solicitor.

solicitor director means a director of an incorporated legal practice who holds an unrestricted practising certificate as a solicitor and barrister (including an interstate practising certificate that confers a similar authority to practise in this State).

47C Nature of incorporated legal practice

- (1) An incorporated legal practice is a corporation that provides legal services.

- (2) Any incorporated legal practice may provide any other service and conduct any other business that the corporation may lawfully provide or conduct (other than a managed investment scheme within the meaning of Chapter 5C of the *Corporations Law*).
- (3) However, a corporation is not an incorporated legal practice if:
 - (a) the corporation does not receive any form of, or any expectation of, a fee, gain or reward for the legal services it provides, or
 - (b) the only legal services that the corporation provides are in-house legal services, namely, legal services concerning a proceeding or transaction to which the corporation (or a related body corporate within the meaning of section 50 of the *Corporations Law*) is a party, or
 - (c) the regulations exempt the corporation from this Part.

47D Corporations eligible to be incorporated legal practices

- (1) Any corporation is eligible to be an incorporated legal practice.
- (2) This section does not authorise a corporation to provide legal services if the corporation is prohibited from doing so by the Act or law under which it is incorporated or its affairs are regulated.

Note. See sections 48D and 48E for offences relating to the provision of legal services by unauthorised corporations.

47E Solicitor directors of incorporated legal practices

- (1) An incorporated legal practice is required to have at least one solicitor director.

Note. Section 48D provides that an incorporated legal practice is guilty of an offence under that section if it does not have a solicitor director (except for any reasonable period required to appoint a replacement solicitor director).

- (2) The solicitor director or directors of an incorporated legal practice are, for the purposes only of this Act, generally responsible for the management of the legal services provided in New South Wales by the incorporated legal practice.

- (3) It is professional misconduct if any such solicitor director does not ensure that:
- (a) appropriate management systems are implemented and maintained to enable the provision of those legal services in accordance with the professional obligations of solicitors and the other obligations imposed by or under this Act, and
 - (b) any conduct of another director of the practice that has resulted or is likely to result in a contravention of those obligations is reported to the Law Society Council promptly after the solicitor director becomes aware of it, and
 - (c) any professional misconduct of a solicitor employed by the practice to provide legal services is reported to the Law Society Council promptly after the solicitor director becomes aware of it, and
 - (d) all reasonable action available to the solicitor director is taken to deal with any professional misconduct or unsatisfactory professional conduct of a solicitor so employed by the practice.
- (4) It is also professional misconduct for any such solicitor director to remain as a director of the corporation, and thereby authorise its continued provision of legal services, if it becomes apparent that the provision of those legal services will result in breaches of the professional obligations of solicitors or other obligations imposed by or under this Act (whether because of the unsuitability of any other director or directors or otherwise).
- (5) The provisions of this section relating to a solicitor director of an incorporated legal practice that is an externally-administered body corporate under the *Corporations Law* do not apply to the extent that they are inconsistent with the provisions of Chapter 5 of the *Corporations Law* or of Parts 8 and 8A of this Act.
- (6) This section does not apply to a community legal centre that complies with section 48H.

47F Prohibition of repeat offender from managing a corporation that is an incorporated legal practice

- (1) The Supreme Court may, on the application of the Law Society Council, disqualify a person from managing a corporation that is an incorporated legal practice for the period the Court considers appropriate if the Court is satisfied that:
 - (a) the person is a person who could be disqualified under section 206E of the *Corporations Law* from managing corporations, and
 - (b) the disqualification is justified.
- (2) The Supreme Court may, on the application of the disqualified person, revoke a disqualification imposed under this section.
- (3) A corporation is not an incorporated legal practice (within the meaning of this Division) that is authorised to provide legal services if a disqualified person is a director or other officer (within the meaning of the *Corporations Law*) of the corporation.

Note. See sections 48D and 48E for offences relating to the provision of legal services by unauthorised corporations.
- (4) A disqualification imposed under this section has effect for the purposes only of this Act and does not affect the *Corporations Law*.

47G Solicitors rules—application to incorporated legal practices

- (1) The solicitors rules apply to solicitors who are officers or employees of an incorporated legal practice.
- (2) However, the solicitors rules cannot prohibit or regulate any of the following matters:
 - (a) the corporations eligible to be incorporated legal practices,
 - (b) the other services or other business that an incorporated legal practice may provide or conduct,
 - (c) the conduct of officers or employees of an incorporated legal practice (other than solicitors in connection with the provision of its legal services).

- (3) In this section:

solicitors rules includes joint rules.

47H Solicitors' professional obligations and privileges

- (1) A solicitor who provides legal services in the capacity of an officer or employee of an incorporated legal practice is not excused from compliance with the professional obligations of a solicitor and does not lose the professional privileges of a solicitor.
- (2) For the purpose only of the application of those obligations and privileges, the persons provided with legal services by an incorporated legal practice are taken to be the clients of the solicitors engaged in providing those services.
- (3) To avoid doubt, the law relating to client legal privilege (or other legal professional privilege) is not excluded or otherwise affected because the solicitor is acting in the capacity of an officer or employee of an incorporated legal practice.
- (4) The directors of an incorporated legal practice do not breach their duties as directors merely because legal services are provided pro bono by the solicitors engaged by the practice.
- (5) In this section:
professional obligations includes:
- (a) duties to the court, and
 - (b) obligations in connection with conflicts of interest, and
 - (c) duties of disclosure to clients (including with respect to matters relating to costs under Part 11), and
 - (d) ethical rules required to be observed by a solicitor.

47I Advertising and disclosures with respect to legal services

- (1) Any restriction imposed by or under this Act in connection with advertising by solicitors applies to advertising by an incorporated legal practice with respect to the provision of its legal services.

Note. See sections 38J and 38K with respect to advertising by solicitors.

- (2) Any such advertisement is, for the purposes of disciplinary proceedings under this Act, taken to have been authorised by the solicitor directors of the practice.
- (3) The regulations may make provision for or with respect to disclosures by an incorporated legal practice in connection with the provision of legal services, including the kind of services provided by the practice and whether those services are or are not covered by the insurance or other provisions of this Act.

47J Application of Part 11 (Legal fees and other costs)

- (1) Part 11 applies to legal services provided by an incorporated legal practice as if a reference in that Part to a solicitor included a reference to the incorporated legal practice and to any external administrator.
- (2) The regulations may make other modifications to the application of Part 11 for the purposes of this section.

47K Provisions relating to indemnity insurance

- (1) An incorporated legal practice is required to comply with the obligations of an insurable solicitor under Division 2 with respect to insurance policies and payments to or on account of the Solicitors' Mutual Indemnity Fund. The Law Society Council may suspend the practising certificate of a solicitor director of the practice if any such obligation is not complied with.
- (2) The insurance premiums or other amounts payable under Division 2 by an incorporated legal practice may be determined by reference to the total number of solicitors employed by the practice and other relevant matters.
- (3) The amounts payable from the Solicitors' Mutual Indemnity Fund include amounts for such liability of an incorporated legal practice, and of the solicitors who are officers and employees of the practice, in connection with the provision of legal services as the Law Society Council determines with the approval of the Attorney General.
- (4) The Law Society Council may exempt an incorporated legal practice from this section on such grounds as the Council considers sufficient.

47L Application of Part 6 (Trust accounts)

- (1) Part 6 applies (subject to this section) to incorporated legal practices in the same way as it applies to solicitors.
- (2) Accordingly:
 - (a) the obligations and rights of a solicitor under Part 6 extend to an incorporated legal practice, but only in connection with legal services provided by the practice, and
 - (b) money received by a solicitor on behalf of another person in the course of practising as a solicitor (within the meaning of Part 6) includes money received by any officer or employee of the incorporated legal practice on behalf of another person in the course of providing legal services.
- (3) The Law Society Council may exercise its powers under section 38 (Refusal, suspension or cancellation of practising certificate as solicitor and barrister—trust accounts etc) with respect to a solicitor director of an incorporated legal practice for any relevant failure of the practice or any officer or employee of the practice.
- (4) The regulations may make any other modifications to the application of Part 6 for the purposes of this section.

47M Application of Part 7 (Solicitors' Fidelity Fund)

- (1) Part 7 applies (subject to this section) to incorporated legal practices in the same way it applies to solicitors.
- (2) Accordingly, an incorporated legal practice is required to make payments to or on account of the Solicitors' Fidelity Fund under Part 7 as if it were a solicitor applying for or holding a practising certificate. The Law Society Council may suspend the practising certificate of a solicitor director of the practice if any such payment is not made by the due date.
- (3) The amounts payable to that Fund by an incorporated legal practice may be determined by reference to the total number of solicitors employed by the practice and other relevant matters.

- (4) For the purposes of the application of Part 7 to incorporated legal practices:
- (a) a failure to account by a solicitor extends to a failure to account by an incorporated legal practice, but only if it occurs in connection with the provision of legal services, and
 - (b) a dishonest default by a solicitor extends to a dishonest default by an incorporated legal practice, but only if it occurs in connection with the provision of legal services, and
 - (c) a reference to a firm of solicitors includes a reference to an incorporated legal practice.

Note. See for example section 89 with respect to the ceiling on payments from the Fund for failures to account by the same firm.

- (5) The regulations may make any other modifications to the application of Part 7 for the purposes of this section.

47N Extension of vicarious liability of incorporated practice relating to failures to account and dishonesty

- (1) This section applies to any of the following proceedings (being proceedings based on the vicarious liability of an incorporated legal practice):
- (a) civil proceedings relating to a failure to account for, pay or deliver money or other valuable property received by, or entrusted to, the practice (or to any solicitor or other employee of the practice) in the course of the provision of legal services by the practice, being money or other valuable property under the direct or indirect control of the practice,
 - (b) civil proceedings for any other debt owed, or damages payable, to a client as a result of a dishonest act or omission by a solicitor who is an employee of the practice in connection with the provision of legal services to the client.
- (2) If the incorporated legal practice would not (but for this section) be vicariously liable for any acts or omissions of its officers and employees in any such proceedings, but would be liable for those acts or omissions if the practice and those

officers and employees were carrying on business in partnership, the practice is taken to be vicariously liable for those acts or omissions.

47O Investigation of incorporated legal practices

- (1) Section 55 and section 152 apply (subject to this section) to corporations that are or were incorporated legal practices in the same way that they apply to persons who are or were solicitors or legal practitioners.
- (2) An investigation under either of those sections extends to all of the affairs of an incorporated legal practice and to all of its documents, so long as the investigation relates to the provision of legal services.
- (3) The regulations may:
 - (a) extend the powers of investigation under section 55 or section 152 in relation to incorporated legal practices by reference to any powers of investigation conferred on the Australian Securities and Investment Commission under the *Corporations Law* or under any Commonwealth Act with respect to the affairs of a corporation, and
 - (b) require a copy of any document that is to be furnished by an incorporated legal practice to the Australian Securities and Investment Commission under the *Corporations Law* to be furnished also to the Law Society Council or the Commissioner, or both, and
 - (c) make other modifications to the application of section 55 or section 152 for the purposes of this section.

47P Review of incorporated legal practices

- (1) The Law Society Council or the Commissioner may conduct a review of the compliance of an incorporated legal practice (and of its officers and employees) with the requirements of or made under this Act in connection with the provision of legal services by the practice.
- (2) The investigative powers referred to in section 47O may be exercised for the purposes of any such review.

- (3) Any such review may be conducted whether or not a complaint has been made with respect to the provision of legal services by the incorporated legal practice.
- (4) A report of any such review:
 - (a) is to be provided to the incorporated legal practice concerned, and
 - (b) may be provided to the Commissioner by the Law Society Council or to that Council by the Commissioner (as the case may be), and
 - (c) may be taken into account in connection with any disciplinary proceedings under Part 10 or in connection with the issue, suspension or cancellation of practising certificates by the Law Society Council.

47Q Disclosure of information to ASIC

- (1) The Law Society Council (or a person referred to in section 56 (1) or (3)) or the Commissioner may disclose to the Australian Securities and Investment Commission information concerning an incorporated legal practice or former incorporated legal practice that has been acquired in connection with the exercise of functions under this Act.
- (2) Any such information may be provided despite any law relating to secrecy or confidentiality (including any provisions of section 56).

47R External administration proceedings under Corporations Law

- (1) This section applies to proceedings in any court under Chapter 5 (External administration) of the *Corporations Law*:
 - (a) relating to a corporation that is an externally-administered body corporate under that Law, or
 - (b) relating to a corporation becoming such a body corporate,being a corporation that is or was an incorporated legal practice.

- (2) The Law Society Council and the Commissioner are entitled to be a party to any such proceedings, unless the court determines that the proceedings do not concern or affect the provision of legal services by the incorporated legal practice.
- (3) The court may, when exercising its jurisdiction in any such proceedings, have regard to the interests of the clients of the incorporated legal practice who have been or are to be provided with legal services by the practice (even if those interests conflict with the interests of the creditors or shareholders of the practice). This subsection does not authorise the court to make any decision that is contrary to a specific provision of Chapter 5 of the *Corporations Law*.
- (4) Parts 8 (Receivers) and 8A (Managers) do not apply to corporations that are or were incorporated legal practices.

47S This Act prevails over Corporations Law and certain other instruments

- (1) The provisions of this Act or the regulations that apply to or in respect of an incorporated legal practice prevail, to the extent of any inconsistency, over the applicable corporate law.
- (2) For the purposes of this section, the *applicable corporate law* for an incorporated legal practice comprises the following:
 - (a) the provisions of or made under the *Corporations Law*,
 - (b) if the practice is not incorporated under the *Corporations Law*—the provisions of or made under the Act or law under which the practice is incorporated,
 - (c) the constitution or other constituent documents of the practice.

47T Regulations relating to incorporated legal practices

- (1) The regulations may make provision for or with respect to legal services provided by incorporated legal practices.
- (2) A regulation prevails over any inconsistent provision of the solicitors rules or joint rules.

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Schedule 1 Principal amendment

- (3) A regulation may provide that a breach of the regulations constitutes or may constitute professional misconduct or unsatisfactory professional conduct by a solicitor director or by the solicitor responsible for the breach, or both.

Schedule 2 Consequential and other amendments of Legal Profession Act 1987

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

incorporated legal practice means a corporation that is an incorporated legal practice within the meaning of Division 2A of Part 3.

[2] Section 3 (1), definition of “solicitor”

Omit “, and includes a solicitor corporation”.

[3] Section 3 (1), definition of “solicitor corporation”

Omit the definition.

[4] Section 26 Election to practise as barrister or solicitor and barrister

Insert “and barrister” after “solicitor” in section 26 (2).

[5] Section 28 Solicitors and barristers

Omit section 28 (5).

[6] Section 32 Conditions may be imposed on practising certificates

Omit section 32 (4).

[7] Section 38A Refusal, suspension or cancellation of practising certificate—infirmary

Omit “(other than that of a solicitor corporation)” from section 38A (1).

[8] Section 38F Application of provisions of Division

Insert “and barrister” after “solicitor” in section 38F (1).

[9] Section 38L Advocates

Omit section 38L (4).

[10] Section 48 Application of Division to other persons

Re-number the section as section 47A.

[11] Section 48B Unqualified person acting as barrister or solicitor and barrister

Omit "A person" from section 48B (1). Insert instead "A natural person".

[12] Section 48B (5)

Omit the subsection.

[13] Section 48C Unqualified person making false representation to be a barrister or solicitor and barrister

Omit "A person" wherever occurring. Insert instead "A natural person".

[14] Section 48D Offence by corporation or officers

Omit "Maximum penalty: 50 penalty units" from section 48D (1).
Insert instead "Maximum penalty: 500 penalty units".

[15] Section 48D (3) and (4)

Omit section 48D (3). Insert instead:

(3) This section does not apply to or in respect of an incorporated legal practice that has at least one solicitor director (within the meaning of Division 2A of Part 3). Any such practice does not contravene this section because it ceases to have such a solicitor director if a new solicitor director is appointed within the time prescribed by the regulations or, if no such time has been prescribed, within a reasonable time.

(4) If a person contravenes this section:

(a) no action lies for the recovery of costs in respect of anything done in the course of the contravention, and

- (b) if any such costs have been paid, the amount paid may be recovered as a debt owed by the person to whom they were paid to the other person who paid them.

[16] Section 48E Limitation on general legal work and probate work

Insert “or unless the person is an incorporated legal practice and the work is done on its behalf by a barrister or solicitor” after “barrister or solicitor” in section 48E (2).

[17] Section 48E (7)

Omit the subsection.

[18] Section 48F Sharing receipts

Insert after section 48F (4):

- (5) Despite anything to the contrary in this section, a solicitor may share with an incorporated legal practice the receipts of the business of the practice. The regulations, solicitors rules or joint rules may not prevent or restrict the solicitor from doing so.

[19] Sections 48I Prohibition on employment of certain non-legal clerks

Insert after section 48I (2):

- (2A) The prohibition imposed by an order made under this section extends to a prohibition on the employment or payment of the person against whom the order was made in connection with the legal services provided by an incorporated legal practice.

[20] Section 48K Associates who are disqualified or convicted persons

Insert after section 48K (7):

- (8) This section extends to solicitor directors of an incorporated legal practice. Accordingly, a solicitor director is guilty of professional misconduct if the solicitor director would be guilty of professional misconduct under this section:

- (a) if persons employed or paid by the incorporated legal practice in connection with the provision of legal services were taken to be employed or paid by the solicitor director, or
- (b) if prescribed shareholders in the incorporated legal practice were taken to be sharing the receipts of the solicitor director's practice.

[21] Section 54 Functions of Law Society

Omit paragraph (d) of the definition of *solicitor* in section 54 (2).

Insert instead:

- (d) in relation to the provision of legal services, an incorporated legal practice or a former or dissolved incorporated legal practice.

[22] Section 55 Investigation of affairs of solicitor or locally registered foreign lawyer

Omit paragraphs (c) and (d) of the definition of *solicitor* in section 55 (11).

Insert instead:

- (c) in relation to anything done or omitted to be done by a solicitor—a deceased solicitor or deceased former solicitor, and
- (d) except in relation to anything done or omitted to be done by a solicitor—the personal representative of a deceased solicitor or deceased former solicitor.

[23] Section 60 Definitions

Omit “, or a director of or voting shareholder in the solicitor (being a solicitor corporation)” from section 60 (2) (b).

[24] Section 80 Claims against Fidelity Fund

Omit section 80 (5) (b).

[25] Section 81 Claims by solicitor who pays compensation for failure to account or dishonest default

Omit “, or the receiver, receiver and manager, official manager or liquidator of a solicitor corporation or a former solicitor corporation” from the definition of *solicitor* in section 81 (3).

[26] Section 90A Subrogation

Omit section 90A (2) (c).

[27] Section 91 Definitions

Omit paragraphs (c) and (d) of the definition of *solicitor* in section 91 (1).
Insert instead:

- (c) in relation to anything done or omitted to be done by a solicitor—a deceased solicitor or deceased former solicitor, and
- (d) except in relation to anything done or omitted to be done by a solicitor—the personal representative of a deceased solicitor or deceased former solicitor.

[28] Section 92 Supreme Court may appoint receiver

Omit “(or, in the case of a solicitor corporation, a director of or voting shareholder in the corporation)” from section 92 (2) (b).

[29] Section 92 (2) (b)

Omit “or because (in the case of a solicitor corporation) the corporation has been dissolved or a receiver, receiver and manager, official manager or liquidator has been appointed in relation to the corporation”.

[30] Section 93 Court to be closed

Omit section 93 (1) (c1).

[31] Section 114B Appointment of manager

Omit “(other than a solicitor corporation)” from section 114B (2).

[32] Section 126 Definitions

Omit the definition of *associated solicitor corporation*.

[33] Section 128 Legal practitioner to whom Part applies

Omit section 128 (1) (b).

[34] Section 171C Determinations of Tribunal

Omit section 171C (2) (a).

[35] Section 171C (2) (b) and (c)

Omit “, or the practice of any associated solicitor corporation,” wherever occurring.

[36] Section 171C (2) (d), (e), (f)

Omit “, or any associated solicitor corporation,” wherever occurring.

[37] Section 171C (2) (d) and (e)

Omit “or the solicitor corporation’s practice” wherever occurring.

[38] Section 171D Compensation orders of Tribunal

Omit section 171D (5). Insert instead:

- (5) In this section, *legal practitioner* includes an incorporated legal practice of which the legal practitioner is an officer or employee.

[39] Section 171E Award of costs by Tribunal

Omit “(or any associated solicitor corporation)” from section 171E (1).

[40] Section 171M Jurisdiction of Supreme Court not affected

Omit “(other than solicitor corporations)” from section 171M (1).

[41] Part 10A Solicitor corporations

Omit the Part.

[42] Section 173 Definitions

Omit section 173 (2) (f) and “or” at the end of section 173 (2) (e).

[43] Section 194 Signing of bill of costs

Omit “signed by a solicitor (being a solicitor corporation)” from section 194 (2).

Insert instead “signed by a solicitor (if it relates to legal services provided by an incorporated legal practice)”.

[44] Section 209C Supreme Court may order delivery up of documents etc

Insert after section 209C (5):

- (6) In this section, a reference to a solicitor includes a reference to an incorporated legal practice in connection with legal services provided by the practice.

[45] Section 213 Proof of certain matters not required

Omit “(other than a solicitor corporation)” from section 213 (a).

[46] Schedule 8 Savings, transitional and other provisions

Insert at the end of clause 1A (1):

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[47] Schedule 8

Insert at the end of the Schedule (with appropriate Part and clause numbering):

Part Provisions consequent on the enactment of the Legal Profession Amendment (Incorporated Legal Practices) Act 2000

Definitions

In this Part:

amending Act means the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000*.

Existing solicitor corporations

- (1) This clause applies to a solicitor corporation that was formed under Division 1 of Part 10A of this Act and that was in existence immediately before the repeal of that Part by the amending Act.
- (2) Any such solicitor corporation is not dissolved by the repeal of Part 10A of this Act, but that Part continues to apply to the solicitor corporation (despite its repeal) until the winding up of the corporation in accordance with that Part or with the regulations made under this Schedule. Any such regulations may apply provisions of the *Corporations Law* or any other Act, with or without modification.
- (3) Until the dissolution of any such solicitor corporation, any other provision of this Act relating to solicitor corporations that is repealed by the amending Act continues to apply, subject to the regulations made under this Schedule, to the solicitor corporation (despite the repeal of the provision).
- (4) The transfer, in accordance with the *Corporations Law*, of the incorporation of any such solicitor corporation to incorporation under the *Corporations Law* is authorised.

Schedule 3 Consequential amendments of other Acts

(Section 4)

3.1 Public Notaries Act 1997 No 98

[1] Section 7 Roll of public notaries

Omit “, or any associated solicitor corporation (within the meaning of Part 10 of that Act),” from section 7 (5).

[2] Section 11 Employed public notaries not to carry out certain work

Omit “or a solicitor corporation” from section 11 (2).
Insert instead “or an incorporated legal practice”.

3.2 Workplace Injury Management and Workers Compensation Act 1998 No 86

Section 138 Power to restrict or ban recovery of costs by solicitors

Omit “solicitor corporation” wherever occurring.
Insert instead “incorporated legal practice”.

[Minister's second reading speech made in—
Legislative Council on 23 June 2000
Legislative Assembly on 31 October 2000]

BY AUTHORITY