

LEGAL PRACTITIONERS (INCORPORATION) ACT

The Chief Justice, Brian Martin, and the Law Society of the NT have written to the Chief Minister, the Hon. Denis Burke, requesting urgent amendments to the *Legal Practitioners (Incorporation) Act* following a recent court decision which highlighted anomalies in the current legislation.

"It would appear that if the *Legal Practitioners (Incorporation) Act* is to have effective force under the new companies incorporation regime, amendments are required to bring it into line with the latest legislation," the Chief Justice said.

His comments came after an application for approval for the formation of Paul Walsh & Associates Pty Ltd as a practising company was rejected. The reasons for the decision follow:

[1] This application for approval for the formation of Paul Walsh & Associates PTY Ltd as a practising company is not approved. The outcome is not due to any fault on the part of the applicant.

[2] Section 5 of the *Legal Practitioners (Incorporation) Act 1989* (NT) makes it clear that the Chief Justice shall not approve the formation of a practising company unless the proposed Memorandum and Articles of the proposed company contain certain provisions specified in s5(1). The Memorandum and Articles are also to be approved by the Chief Justice, and that approval is to be the formation of a company as constituted by the approved Memorandum and Articles of the company (s 5(2)). Section 6 provides that a company shall not be incorporated as a practising company except as constituted by Memorandum and Articles approved under s5. It is also provided that any alteration to the Memorandum and Articles of a practising company shall not be registered except pursuant to a direction of the Chief Justice.

[3] The difficulty arises as a result of the operation of the *Company Law Review Act 1998* pursuant to which the Memo-

randum and Articles of Association were abolished and replaced with a requirement that a company have a "Constitution". The applicant sought to show that notwithstanding that legislative change, the Chief Justice could approve the incorporation of a practising company under the proposed Company's Constitution which accompanied the application.

[4] I am unable to accept that submission. The words of the *Legal Practitioners (Incorporation) Act* are clear, and I have not been referred to any legislation which expressly or by implication amends that wording such as to bring it into line with the new Corporations Law.

[5] I recommend that urgent attention be given to the amending to the *Legal Practitioners (Incorporation) Act* to bring it into line with the new company's incorporation regime.

Confiscation that counts: ALRC urges reform

Sweeping changes have been recommended to Commonwealth laws designed to confiscate the proceeds of crime, in a report prepared by the Australian Law Reform Commission.

The ALRC report, *Confiscation that counts: a review of the Proceeds of Crime Act 1987*, proposes the introduction of a non-conviction based (or civil) confiscation regime, with wider powers for judges to deprive wrongdoers of their profits of their unlawful activities. The civil regime would apply only to specifically identified unlawful activity of any kind usually conducted on a repeat basis for profit, such as narcotics dealing.

The report follows a detailed review of federal proceeds of crime legislation, which began in December 1997. This review found that federal conviction-based proceeds of crime legislation is largely ineffective. Over the past five years, Commonwealth confiscation laws have netted an average of \$7.5 million per year - a modest sum when compared with the scale of illegal earnings.

According to the Australian Law Reform Commission President, Professor David Weisbrot, the report's recommendations "have the potential to increase greatly the reach of the legislation and its capacity to strip the illicit wealth from those criminals who have considered themselves successful and safe."

There are a number of recommendations made in the report, which include:

- a proposal for non-conviction based recovery of proceeds of crime;
- a simplified process for the making of restraining orders;
- provision for new federal laws to confiscate literary proceeds, or any proceeds derived from the commercial exploitation of criminal activities, proposals for dealing with the troublesome issue of the payment of legal expenses from restrained assets. Restrained assets that are suspected of being the proceeds of crime currently can be released to fund a legal defence. Under the Commission's pro-

posals, alleged wrong doers would be required to fund their defence from unrestrained assets. Where that is not possible, they would receive legal aid for the type of defence that a self-funded litigant would provide for themselves. Legal aid commissions would then be able to draw down from the Confiscated Assets Reserve; and

- measures to provide increased protection for the rights of innocent third parties, particularly the rights of secured creditors

"I expect an intensive consultation process and period of analysis based on this report before the commendable efforts of the Commission culminate in new legislation on this very important subject," said Professor Weisbrot.

A copy of the report, *Confiscation that counts: a review of the Proceeds of Crime Act 1987*, is available from the Law Society of the Northern Territory.

