

DIVISION 81 DETERMINATION

Under subsection 81-5(1) of the A New Tax System (Goods and Services Tax) Act 1999 ('the Act'), the payment of any Australian tax, fee or charge (other than the GST) that you make, or the discharging of your liability to make such a payment, is to be treated as the provision of consideration, to the entity to which the tax, fee or charge is payable, for a supply that the entity makes to you.

However, under subsection 81-5(2) of the Act, the payment of any Australian tax, fee or charge that is specified in a written determination of the Treasurer, or the discharging of a liability to make such a payment, is not the provision of consideration.

Filing fees and certain other fees have been included in the Treasurer's determination under subsection 81-5(2). You can locate the determination via the Law Society of NSW's GST web site at www.lawsocnsw.asn.au/gst. If the tax, fee or charge listed in the Treasurer's determination is paid by the person liable to pay the tax, fee or charge (or their agent), then the item is not subject to the GST.

There are three ways in which a legal practitioner's on charging of a GST exempt tax, fee or charge may be treated by the Act.

1. If the exempt tax, fee or charge is incurred by the legal practitioner as principal (assuming the legal practitioner is registered for GST purposes), the cost of this tax, fee or charge becomes a business cost for that legal practitioner. Therefore, in subsequent supplies made by that legal practitioner, the cost of the tax, fee or charge is included in arriving at the total value of the supplies — even if the supplier identified on the invoice a specific amount for the tax, fee or charge. In these subsequent supplies, the nature of the payment of the tax, fee or charge has changed and will be subject to the normal GST rules. In which event the practitioner will add GST to that supply.
2. If the exempt tax, fee or charge is incurred by the legal practitioner as agent for the

client, then the general law of agency applies. That is, a thing done by an agent as agent for a principal is a thing done by the principal. In these circumstances, the exempt tax, fee or charge does not become a business cost to the legal practitioner and therefore does not become part of that practitioner's taxable supplies to their client. In that event the practitioner will NOT add GST to the supply. Documentation supporting that agency arrangement needs to be retained by the legal practitioner (eg. cost agreement). It is NOT sufficient to assume that monies received into trust will of itself establish that the legal practitioner is acting as the client's agent.

3. If the exempt tax, fee or charge is not incurred by the legal practitioner, but is instead paid by the client to the Government agency, then the tax, fee or charge is not subject to the GST.

The Australian Tax Office approved the above statement on 14 July 2000

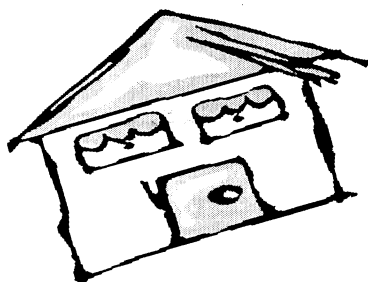
SA SOCIETY TAKES ON REAL ESTATES

According to the The Financial Review's Hearsay (14 July 2000) there was a time when the phrase "national competition policy" was enough to trigger fear and loathing in lawyers everywhere.

But judging by the experience of the South Australian Law Society, it might be time for a reassessment.

As part of the national policy agreement, all States agreed to review legislation that restricted competition. While most lawyers concentrated on defending their own patch, the South Australians used the review to break into a brand new market.

The panel that reviewed the South Australian Land Agents Act recommended that solicitors should be allowed to sell real estate, and the Attorney-General, Trevor Griffin, has agreed.



He has written to the Law Society and told them "it is intended that this pro-competitive reform will be implemented as soon as possible".

As a result, the executive director of the Law Society, Barry Fitzgerald, says solicitors in his State look set to be the first in the nation to take on real estate agents at their own game.

The only condition is that they must complete a course in property appraisal, and the Law Society is moving to

establish just such a course.

"Solicitors have been watching the erosion of traditional practices for decades; this is a real chance to get the competitive juices flowing again," Dr Fitzgerald said.

While the South Australians deserve credit for seeing the opportunity, they had been advised by the Edinburgh Solicitors Property centre, which dominates real estate sales in the Scottish capital.

The director of the ESPC, Annie Murray, has visited the Law Institute of Victoria in Melbourne and the Law Society of NSW in Sydney.

This article was reprinted from Hearsay, Financial Review 14 July 2000, with some minor amendments with approval from Dr Barry Fitzgerald, Law Society of South Australia.