

**LEGAL PROFESSION (SOLICITOR CORPORATIONS)
AMENDMENT BILL 1990**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Legal Profession Act 1987 to provide for the formation and regulation of corporations that carry on business as solicitors.

At present solicitors may practise in their own name or in a partnership or other arrangement with other solicitors (but not by means of a company).

Under the Bill:

- (a) corporations specially formed for the purpose under the Legal Profession Act 1987 may carry on business as solicitors; and
- (b) corporations practising as solicitors outside New South Wales may be recognised in New South Wales.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days appointed by proclamation.

Clause 3 is a formal provision which gives effect to the Schedules of amendments to the Legal Profession Act 1987.

**SCHEDULE 1 - AMENDMENT CONCERNING FORMATION OR
RECOGNITION OF SOLICITOR CORPORATION**

The Schedule inserts new Part 10A into the Principal Act.

Division 1 provides for the formation of solicitor corporations and contains the following proposed sections:

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Proposed section 172A contains definitions used in the Division. Generally words and expressions have the same meanings as in the Companies (New South Wales) Code (the "Code").

Proposed section 172B authorises the formation of solicitor corporations under the Legal Profession Act 1987, instead of under the Code. Any such corporation may be formed by a single person or by 2 or more persons.

Proposed section 172C deals with applications to the LAW Society Council for approval of the incorporation of solicitor corporations, that approval being a prerequisite for incorporation.

Proposed section 172D provides for the registration and incorporation of solicitor corporations by the Corporate Affairs Commission. Apart from the requirement for Law Society Council approval, the procedure is similar to that applicable to companies registered and incorporated under the Code.

Proposed section 172E requires solicitor corporations to be companies with unlimited liability (subject to the proposed limitation of liability for members holding non-voting shares).

Proposed section 172F ensures that only individual solicitors, or solicitor corporations, who hold unrestricted practising certificates may hold voting shares in a solicitor corporation.

Proposed section 172G provides that non-voting shares may be held only by a solicitor, a solicitor corporation, a relative of the solicitor or certain other persons approved by the Law Society Council.

Proposed section 172H contains the limitation of liability for non-voting shareholders in the event of a winding up of the solicitor corporation.

Proposed section 172I contains general provisions relating to shareholders in solicitor corporations, including a provision which enables the Law Society Council to apply to the Supreme Court to ensure the sale of shares in a solicitor corporation that are no longer held by an eligible person.

Proposed section 172J requires the director or directors of a solicitor corporation to be individual solicitors holding a voting share in the corporation or in a related solicitor corporation (at least one director must hold an unrestricted practising certificate).

Proposed section 172K applies the Code (and certain other provisions relating to companies) to solicitor corporations. The provisions applied are those which apply to unlimited companies having a share capital and being exempt proprietary companies. The regulations may modify the application of the relevant provisions.

Proposed section 172L enables a solicitor corporation to remove the abbreviations "LTD", "PTY" etc. from its name.

Proposed section 172M requires the approval of the Law Society Council to any change in the memorandum or articles of association, or the name, of a solicitor corporation.

Proposed section 172N contains consequential provisions to deal with the fact that solicitor corporations (unlike corporations under the Code) might have only one voting shareholder or one director.

Proposed section 172O precludes solicitor corporations from making offers to the public for the purchase of shares, debentures or other interests. Invitations to deposit money with a solicitor corporation are to be subject to Law Society Council approval.

Proposed section 172P enables a solicitor corporation to be wound up on additional grounds to those available under the Code, for example, that the corporation has ceased to hold an unrestricted practising certificate or has ceased to satisfy the requirements of the Division.

Proposed section 172Q confers a right of appeal to the Supreme Court against decisions of the Law Society Council under the Division.

Proposed section 172R declares solicitor corporations not to be companies for the purposes of State laws relating to companies.

Proposed section 172S provides that the Principal Act prevails over inconsistent provisions of the memorandum or articles of association of a solicitor corporation.

Division 2 provides for the recognition of solicitor corporations incorporated outside New South Wales and contains the following proposed sections:

Proposed section 172T defines a "foreign corporation" as one incorporated outside New South Wales.

Proposed section 172U enables the Law Society Council to recognise a foreign corporation as a solicitor corporation if it substantially corresponds to a solicitor corporation formed under Division 1, if it is entitled to practise as a solicitor at its principal place of business and if New South Wales solicitor corporations are authorised to practise at that place.

Division 3 deals generally with New South Wales solicitor corporations and recognised foreign solicitor corporations and contains the following proposed sections:

Proposed section 172V enables solicitor corporations to act under other Acts or laws which refer to solicitors.

Proposed section 172W preserves the law relating to legal professional privilege where solicitor corporations act.

Proposed section 172X preserves the liability of individual solicitors for professional misconduct etc. where they act for solicitor corporations.

SCHEDULE 2 - CONSEQUENTIAL AMENDMENTS

The Schedule contains the necessary consequential changes to the Legal Profession Act 1987 to enable that Act to apply to solicitor corporations formed recognised in accordance with the proposed Act.
