

Proposed Research Outline

Limited Liability Partnership and Liability Capping Legislation for the Practice of Law in Selected Places

1. Background

1.1 The Panel on Administration of Justice and Legal Services, at its meeting on 9 November 2004, requested the Research and Library Services Division (RLSD) to conduct a research on the forms of business structure to limit liability for the practice of law in selected places. In particular, the Panel agreed that the research should examine the operation of limited liability partnership (LLP) and the safeguards to protect the parties concerned and other members of the public.

2. Proposed places to be studied

2.1 A preliminary research indicates that some places have the formation of LLP restricted to professional services, whilst some have LLP open to all types of businesses. The State of New York of the United States, being one of the former, restricts the adoption of LLP to licensed professionals, including lawyers. On the other hand, the United Kingdom initially proposed that LLP should be allowed only for professional practices. Nonetheless, the LLP option was extended to all types of businesses when Parliament passed the LLP statute in 2000 for England, Wales and Scotland.

2.2 In Australia, there is no provision for the formation of LLP, but some states have adopted legislation capping liability for professionals. New South Wales was the first state in Australia to introduce such legislation in 1994. The legislation enables professional bodies to establish their own professional standards scheme, requiring members to insure and implement strategies for the protection of the parties concerned in exchange for limited liability. The Law Society of New South Wales set up its professional standards scheme in 1996.

2.3 RSLD proposes to study how legal practices limit their liability through LLP or legislation in the following places:

- (a) The State of New York of the United States;
- (b) England and Wales of the United Kingdom; and
- (c) New South Wales of Australia.

3. Proposed Outline

Part 1 — Introduction

- (a) Background
- (b) Scope of research

Part 2 — Basic concepts

- (a) Liability exposure of legal practices operating as partnership
- (b) Forms of business structure which allow limited liability

Part 3 — Operation of limited liability partnership or the use of liability capping legislation for the practice of law in selected places

- (a) Background of the adoption of limited liability partnership / liability capping legislation
- (b) Eligibility and applicability
- (c) Scope of liability limitation
- (d) Regulation and safeguards to protect interests of parties concerned and other members of the public, including insurance, disclosure requirements, winding up arrangements, professional conduct and practice rules/ guidelines and other measures

Part 4 — Comparison of the various attributes of limited liability partnership and liability capping legislation for the practice of law in selected places

Part 5 — Analysis

5. Completion Date

- 5.1 RLSD proposes to complete the research project in March 2005.