



AUSTRALIAN CAPITAL TERRITORY

Legal Practitioners (Amendment) Act (No. 2) 1996

No. 43 of 1996

An Act to amend the *Legal Practitioners Act 1970*

[Notified in ACT Gazette S231: 9 September 1996]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Legal Practitioners (Amendment) Act (No. 2) 1996*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Principal Act

3. In this Act, “Principal Act” means the *Legal Practitioners Act 1970*.¹

Issue

4. Section 23 of the Principal Act is amended by omitting “Subject to sections 24, 24A, 24B, 25, 26, 27, 76 and 83” and substituting “Subject to—

- (a) sections 24, 24A, 24B, 25, 26 and 27; and
- (b) sections 23A, 76 or 83;”.

Insertion

5. After section 23 of the Principal Act the following section is inserted:

Issue of unrestricted practising certificates to certain persons

“23A. (1) In this section—

‘indemnity cover’ means professional indemnity insurance referred to in section 78 or indemnity provided for under the Solicitors’ Mutual Indemnity Fund referred to in Part X.

“(2) The Law Society may issue an unrestricted practising certificate to a solicitor in relation to a period without the solicitor having indemnity cover in respect of that period if the Law Society is satisfied that the nature of the practice of the solicitor does not require indemnity cover.

“(3) The Law Society may issue an unrestricted practising certificate under this section subject to conditions.”.

Powers of the Court relating to practising certificates

6. Section 29 of the Principal Act is amended—

(a) by omitting subsection (1) and substituting the following subsection:

“(1) Where the Law Society—

- (a) has refused to issue a practising certificate of the kind sought by a person;
- (b) has refused to issue an unrestricted practising certificate to a person in accordance with section 23A in relation to a period without the person having indemnity cover in respect of that period; or
- (c) has issued an unrestricted practising certificate to a person in accordance with section 23A subject to a condition which the person considers is unreasonable;

the person may, within 14 days after being given notice of the refusal, apply to the Supreme Court for an order under subsection (5).”;

- (b) by omitting subsection (5) and substituting the following subsection:

“(5) On an application under subsection (1), the Supreme Court may direct the Law Society, as the case requires—

- (a) to issue to the applicant a practising certificate of the kind sought by the applicant or, if the applicant sought the issue of an unrestricted practising certificate, the issue to the applicant of a restricted practising certificate (with or without indemnity cover); or
 - (b) to issue to the applicant a practising certificate subject to conditions specified by the Court in substitution for any conditions imposed by the Law Society under subsection 23A (3).”; and
- (c) by adding at the end the following subsection:

“(10) In this section—

‘indemnity cover’ means professional indemnity insurance referred to in section 78 or indemnity provided for under the Solicitors’ Mutual Indemnity Fund referred to in Part X.”.

Insertion

7. After section 75 of the Principal Act the following section is inserted:

Application of sections 76 and 77

“75A. Sections 76 and 77 do not apply in relation to a solicitor during a period in respect of which the solicitor—

- (a) has indemnity under the Solicitors’ Mutual Indemnity Fund referred to in Part X; or
- (b) has been issued with a practising certificate under section 23A.”.

Substitution

8. Section 83 of the Principal Act is amended by adding at the end the following subsection:

“(2) Subsection (1) does not apply in relation to a solicitor during a period in respect of which the solicitor—

- (a) has professional indemnity insurance in accordance with Part IX; or
- (b) has been issued with a practising certificate under section 23A.”.

Transitional

9. (1) Where an application had been made under section 29 of the Principal Act before the commencement of this Act and was pending immediately before that commencement, the application shall be dealt with as if it had been made under section 29 of the Principal Act as amended by this Act.

(2) Where a direction had been given by the Supreme Court under subsection 29 (5) of the Principal Act before the commencement of this Act, the direction shall continue to have effect as if it had been given under subsection 29 (5) of the Principal Act as amended by this Act.

Validation

10. An unrestricted practising certificate purportedly issued to a solicitor in respect of a period before the commencement of this Act, or for a period which began before and will expire after the commencement of this Act, shall not be invalid or be called into question by reason only that the solicitor did not have professional indemnity insurance within the meaning of section 78 of the Principal Act if the solicitor had or has in respect of that period indemnity under the Solicitors' Mutual Indemnity Fund referred to in Part X of the Principal Act.

NOTE

Principal Act

1. Reprinted as at 12 March 1996. See also Act No. 26, 1996.

[Presentation speech made in Assembly on 27 June 1996]

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